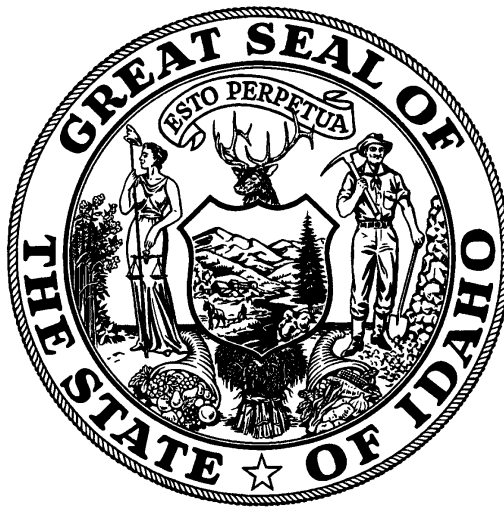


PENDING RULES

COMMITTEE RULES

REVIEW BOOK

Submitted for Review Before
House Commerce &
Human Resources Committee
65th Idaho Legislature
Second Regular Session – 2020



Prepared by:

*Office of the Administrative Rules Coordinator
Division of Financial Management*

January 2020

HOUSE COMMERCE & HUMAN RESOURCES COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2020 Legislative Session

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IDAPA 09 – IDAHO DEPARTMENT OF LABOR

DOCKET NO. 09-0000-1900

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 2020 Idaho State Legislature for final approval. The pending rules become final and effective upon the conclusion of the legislative session, unless the rules are approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved or rejected in part by concurrent resolution, the rules becomes final and full force and effect upon adoption of the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted pending rules. This action is authorized pursuant to Sections 45-616 and 72-1333(2), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rules and a statement of any change between the text of the proposed rules and the text of the pending rules with an explanation of the reasons for the change:

This following pending rules adopt and re-publish the following existing and previously approved and codified chapter(s) under IDAPA 09, rules of the Idaho Department of Labor:

IDAPA 09

- 09.01.01, *Rules of the Administrative Procedures of the Idaho Department of Labor*
- 09.01.08, *Rules on the Disclosure of Employment Security Information*
- 09.01.30, *Unemployment Insurance Benefit Administration Rules*
- 09.01.35, *Unemployment Insurance Tax Administration*
- 09.01.60, *Complaint Procedures Under the Workforce Innovation and Opportunity Act*
- 09.02.01, *Rules of the Disability Determinations Service*
- 09.05.03, *Rules Determining Bargaining Representatives*

The text of the pending rules is amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin, [Vol. 19-6SE, pages 1,184-1,247](#).

1. Outside of edits that delete excess and unnecessary verbiage or clarify the rule language so it is easier to read and understand, no significant changes or edits were made to the following proposed rules published in the June 19, 2019 Idaho Administrative Bulletin:

- 09.01.01 – Rules of the Administrative Procedures of the Idaho Department of Labor
- 09.01.08 – Rules on the Disclosure of Employment Security Information
- 09.01.35 – Unemployment Insurance Tax Administration
- 09.02.01 – Rules of the Disability Determinations Service
- 09.05.03 – Rules Determining Bargaining Representatives

2. Of the proposed rules published in the June 19, 2019 Idaho Administrative Bulletin, the following pending rules contain additional changes summarized as follows:

A. 09.01.30 - *Unemployment Insurance Benefits Administration Rules*

1. Section 575.04.c. Code C is a section of this chapter that defines a code used to identify a claimant looking for work. The code in question – Code C – is being deleted because it has not been used for more than 20 years, and is considered obsolete and irrelevant:

- 575.04.c. Code C. A claimant who has no marketable skills or whose skills have become obsolete and who is unable to return to his former occupation, or who has a special need for employment-related services.

2. Sections 425.05, 425.06, 575.09 refer to the work registration requirement that is currently duplicated in statute, 72-1366(2), making the rule duplicative and redundant. The Department's Unemployment Insurance Benefits

Bureau works closely with the Workforce Services Bureau to encourage claimants to register for work and assist individuals in finding new work.

B. 09.01.60 - *Complaint Procedures Under the Workforce Innovation and Opportunity Act*

1. This chapter describes the procedures for processing complaints in accordance with federal regulations under the Workforce Innovation and Opportunity Act (WIOA). According to the department's Deputy Attorney General, the deletions for this chapter involve details of the internal complaint processing procedures that - because said details are included in the Idaho State WIOA nondiscrimination plan - do not need to be in Rule and include sections:

- 012.01- 02 and 08 -11, Discrimination Complaints
- 013.01- 07, Program Complaints Against Local WIOA Programs and Policies - Initial Review
- 014.01 – 06, Program Complaints Against Statewide WIOA Programs and Policies - Initial Review

FISCAL IMPACT: It is not expected this rulemaking will 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.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact:

- Georgia Smith, Deputy Director (x2102) – IDAPA 09.01.01; IDAPA 09.01.08; IDAPA 09.05.03
- Amy Hohnstein, Administrator (x3330) – IDAPA 09.01.60
- Joshua McKenna – Bureau Chief (x3919) – IDAPA 09.01.30
- Larry Ingram – Bureau Chief (x3543) – IDAPA 09.01.35
- Laura Croft (x2343) – IDAPA 09.02.01

Dated this 23rd day of October, 2019.

Jani Revier, Director
Idaho Department of Labor
317 W. Main Street
Boise, ID 83735
Phone: (208) 332-3570 ext. 3110
Fax: (208) 334-6430

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

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 45-616 and 72-1333(2), 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 09, Rules of the Idaho Department of Labor, with modification.

IDAPA 09

- 09.01.01 - *Rules of Administrative Procedures of the Idaho Department of Labor* – Re-named from Rules of the Executive Division and with modifications and modified content from other existing chapters.
- 09.01.08 - *Rules on Disclosure of Employment Security Information* – with modification.
- 09.01.30 - *Unemployment Insurance Benefits Administration Rules* – with modification.
- 09.01.35 - *Unemployment Insurance Tax Administration Rules* – with modification.
- 09.01.60 - *Complaint Procedures Under the Workforce Innovation and Opportunity Act* – with modification.
- 09.02.01 - *Rules of the Disability Determinations Service* – with modification.
- 09.05.03 - *Rules Determining Bargaining Representatives* – with modification.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rules 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.

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 rules, call (208) 332-3570 and ask for:

- Georgia Smith, Deputy Director (x2102) – IDAPA 09.01.01; IDAPA 09.01.08; IDAPA 09.05.03
- Amy Hohnstein, Administrator (x3330) – IDAPA 09.01.06; IDAPA 09.01.50; IDAPA 09.01.60
- Joshua McKenna – Bureau Chief (x3919) – IDAPA 09.01.04; IDAPA 09.01.30
- Larry Ingram – Bureau Chief (x3543) – IDAPA 09.01.35
- Laura Croft (x2343) – IDAPA 09.02.01

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 of June, 2019.

<p>THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0000-1900</p>
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09.01.01 – RULES OF ADMINISTRATIVE PROCEDURE OF THE DEPARTMENT OF LABOR

000. LEGAL AUTHORITY.

These rules are promulgated under Sections 45-616 and 72-1333(2), Idaho Code.

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001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 09.01.01, “Rules of Administrative Procedure of the Department of Labor.”

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02. Scope. These rules govern all procedures for rulemaking, petitions for declaratory rulings, and determinations and appeals pursuant to the Employment Security Law, Title 72, Chapter 13, Idaho Code, and the Claims for Wages Act, Title 45, Chapter 6, Idaho Code, and for other programs administered by the Department unless otherwise specified by law.

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002. (RESERVED)

003. ADMINISTRATIVE APPEALS.

Administrative appeals from determinations under the Employment Security Law and the Claims for Wages Act may be taken as provided in these rules and applicable provisions of the Employment Security Law and the Claims for Wages Act.

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004. PAYMENTS TO THE DEPARTMENT.

Any payment tendered to the Department will be for collection only and will not constitute payment of any amount due until the payment clears the appropriate financial institution. Should the Department incur any additional expense in the payment collection, the expense will be paid by the person who tenders said payment to the Department.

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005. – 009. (RESERVED)

010. DEFINITIONS.

01. Appeals Examiner. A Department hearing officer designated to hear administrative appeals pursuant to the Employment Security Law and the Claims for Wages Act.

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02. Claims for Wages Act. The Claims for Wages Act codified at Title 45, Chapter 6, Idaho Code.

()

03. Department. The Idaho Department of Labor.

()

04. Determination. Unless the context clearly suggests otherwise, reference to a determination in these rules includes a determination, redetermination, or a revised determination.

()

05. Employment Security Law. The Employment Security Law codified at Title 72, Chapter 13, Idaho Code.

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011. – 014. (RESERVED)

015. EXEMPTION FROM ATTORNEY GENERAL ADMINISTRATIVE PROCEDURE RULES FOR CONTESTED CASES.

Pursuant to Section 67-5206(5), Idaho Code, the procedures contained in Subchapter B, “Contested Cases,” of the Idaho Rules of Administrative Procedure of the Attorney General, IDAPA 04.11.01.100 through 04.11.01.799, do not apply to appeals within the Department. All appeals within the Department are governed solely by the provisions of the Employment Security Law, the Claims for Wages Act, these rules, and by the applicable federal law governing programs administered by the Department.

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016. REASONS FOR EXEMPTION FROM ATTORNEY GENERAL'S ADMINISTRATIVE PROCEDURE RULES.

01. Unemployment Insurance Benefits and Tax Contribution Proceedings. Sections 72-1361 and 72-1368, Idaho Code, provide that all proceedings to determine the rights to unemployment insurance benefits and tax contribution coverage are exempt from the contested case and judicial review provisions of the Idaho

Administrative Procedure Act. Appeals of complaint determinations and other decisions arising within the complaint system or other programs administered by the Department must be determined by the requirements of applicable federal law. Procedures for administrative proceedings and appeals are provided for in the Employment Security Law and these rules. All procedures affecting the rights to benefits and unemployment insurance coverage must be determined solely by the requirements of the Employment Security Law. Such proceedings must be speedy and simple as required by the Federal Unemployment Tax Act and the Social Security Act. The Department determines that it can more adequately meet these requirements through promulgating its own rules rather than relying upon the rules applicable to other state agencies. ()

02. Claims for Wages Proceedings. All proceedings to determine claims for wages are exempt from the contested case provisions of the Idaho Administrative Procedure Act pursuant to Section 45-617(2), Idaho Code. Procedures for administrative proceedings and appeals are provided for in the Claims for Wages Act and these rules. ()

017. (RESERVED)

018. DECLARATORY RULING PROCEDURES.

Form and Contents of Petitions for Declaratory Rulings on Applicability of Statutes or Rules. Any person petitioning for a declaratory ruling on the applicability of a statute or Department rule must comply with this rule. ()

01. Form of Petition. The petition must: identify the petitioner and state the petitioner's interest in the matter; state the declaratory ruling that the petitioner seeks; and indicate the statute, or rule, and the factual allegations upon which the petitioner relies to support the petition. ()

02. Legal Assertions. Citations of cases and/or statutory provisions may accompany the legal assertions in a petition for a declaratory ruling. ()

03. Filing Petition. A petition for a declaratory ruling on applicability of statutes or rules must be filed with the Director of the Department at 317 Main Street, Boise, Idaho 83735. ()

04. Disposition of Petitions for Declaratory Rulings. When a petition is received in the form and content required by these rules, the Director or the Director's designee will review the petition contents and request additional information from the petitioner, if necessary, and thereafter rule on the petition and notify the petitioner and any other interested parties in writing of the ruling. ()

019. – 024. (RESERVED)

025. WAGE CLAIMS PROCEDURES.

Administrative procedures for wage claims filed with the Department pursuant to the Claims for Wages Act are governed by these rules and Section 45-617, Idaho Code. ()

026. DISMISSAL OF WAGE CLAIMS FOR LACK OF PROSECUTION.

Wage claimants have a responsibility to seek prompt adjudication of their claims. The Department may dismiss, without prejudice, wage claims when claimants fail to respond within thirty (30) days to written notice from the Department that additional action is required on their part to prosecute their claim. The thirty (30) day period for a response begins the date the notice is mailed to the wage claimant's last known address. Mailed responses are deemed received the date they are postmarked. A wage claim dismissed for lack of prosecution may be refiled with the Department subject to limitations of Sections 45-614 and 45-617(1), Idaho Code. ()

027. WAGE CLAIM AND EMPLOYMENT SECURITY LAW DETERMINATIONS.

01. Determinations and Time for Filing Appeals. Department determinations under the Claims for Wages Act and Employment Security Law must be in writing and contain provisions advising the interested parties of their right to appeal the determination within fourteen (14) days from the date of mailing, or the date of electronic transmission to an electronic-mail address approved by the Department, in accordance with Sections 45-617(5), 72-1361 and 72-1368(5), Idaho Code. Every such determination must contain and clearly identify the mailing address, fax number and electronic address for filing an appeal. A determination is final unless, within fourteen (14) days after

notice, as provided in Sections 45-617(5) and 72-1368(5), Idaho Code, an appeal is filed by an interested party with the Department in accordance with these rules. If an appeal from a wage claim determination is not timely filed, the amount awarded by a final determination will be immediately due and payable to the Department. ()

02. Appeals Heard By Appeals Examiners. Appeals from wage claim and Employment Security Law determinations will be heard by an appeals examiner in accordance with the Claims for Wages Act, the Employment Security Law, and these rules. ()

03. Computation of Time. In computing any time period prescribed or allowed by the Employment Security Law or the Claims for Wages Act, the day of the act, event, or default is not to be included. Saturdays, Sundays, and holidays will be counted during the period, except, if the last day of the period is a Saturday, Sunday, or legal holiday, the period extends to the next business day following the Saturday, Sunday, or legal holiday. ()

028. – 034. (RESERVED)

035. APPEALS TO APPEALS EXAMINER – FORM AND MANNER OF FILING OF NOTICES OF APPEAL.

01. Form of Notices of Appeal. Any appeal taken to an appeals examiner pursuant to the Employment Security Law and the Claims for Wages Act must be in writing, signed by an interested party, the appellant or representative, and contain words that, by fair interpretation, request the appeal process for a specific determination or other decision of the Department. ()

02. Filing of Notices of Appeal. To appeal a determination or other decision of the Department, interested parties must follow the instructions on these rules and the document being appealed. If an appeal is delivered personally, the personal delivery date will be noted on the appeal and deemed the date of filing. A faxed or electronically transmitted appeal received after 5 p.m., mountain time zone, on a business day will be deemed filed on the next business day. A faxed or electronically transmitted appeal received on a weekend or holiday will be deemed filed the next business day. If mailed, the appeal will be deemed filed on the date of mailing as determined by the postmark on the envelope containing the appeal, unless a party establishes by a preponderance of the evidence that but for error by the U.S. Postal Service, the envelope would have been postmarked within the period for timely appeal. If such a postal error is established, the appeal will be deemed to be timely filed. Ref. Section 72-1368(6), and Section 45-617, Idaho Code. ()

036. DATE OF MAILING OF DETERMINATIONS.

The date indicated on Department determinations, revised determinations, redeterminations and decisions as the “Date of Mailing” or “Date Mailed” will be presumed to be the date the document was deposited in the United States mail, or the date the document was electronically transmitted to an electronic-mail address approved by the Department pursuant to Section 72-1368(5), Idaho Code, unless shown otherwise by a preponderance of competent evidence. ()

037. EFFECT OF DELAY OR ERROR OF POSTAL SERVICE OR DEPARTMENT.

01. Department Determinations. If a party establishes by a preponderance of the evidence that because of delay or error by the U.S. Postal Service or error on the part of the Department, notice of a Department determination was not delivered to the party's last known address, or transmitted electronically to the party's electronic-mail address approved by the Department, within fourteen (14) days of mailing, as provided by the Employment Security Law and by the Claims for Wages Act, the period for filing a timely appeal extends to fourteen (14) days from the date of actual notice. ()

02. Decisions of the Appeals Examiner. If a party establishes by a preponderance of the evidence that, because of delay or error by the U.S. Postal Service, or because of error on the part of the Department, notice of a decision by an appeals examiner was not delivered to the party's last known address, or transmitted electronically to the party's electronic-mail address approved by the Department, within the time periods prescribed by the Employment Security Law or the Claims for Wages Act for filing an application for rehearing or an appeal to the Industrial Commission, as the case may be, then: ()

a. For an application for rehearing that must be filed within ten (10) days of notice of a decision, the period for filing a timely application for rehearing extends to ten (10) days from the date of actual notice; and ()

b. For an appeal to the Industrial Commission that must be filed within fourteen (14) days of notice of a decision, the period for filing a timely appeal extends fourteen (14) days from the date of actual notice. Ref. Section 72-1368 (5) and (6) and Section 45-617(7), Idaho Code. ()

038. DISMISSAL IF FILING IS LATE.

Where it appears any appeal (request for hearing) to the appeals examiner, or claim, or any other request or application, was not filed within the time period prescribed for filing, it will be dismissed on such grounds; provided, however, before or after such dismissal, the adversely affected interested party will be notified and given an opportunity to show that such appeal, claim for review, petition, or other request was timely. If it is found that such appeal, claim for review, petition, or other request or application was timely, the matter will be decided on the merits. Copies of a decision under this section will either be given, mailed, or electronically transmitted to an electronic-mail address approved by the Department pursuant to Section 72-1368(5), Idaho Code, to all interested parties, together with a clear statement of right of appeal or review. Ref. Section 72-1368 and Section 45-617, Idaho Code. ()

039. – 044. (RESERVED)

045. CONDUCT OF APPEALS HEARING.

Upon request for appeal, a hearing before an appeals examiner will be set. Written notice of the time and place of the hearing will be mailed or electronically transmitted to each interested party not less than seven (7) days prior to the hearing date. ()

01. Telephone Hearings. Hearings will be held by telephone unless, at the sole discretion of the appeals examiner, a personal hearing should be set. In deciding the manner in which to conduct the hearing, the appeals examiner will consider factors, including but not limited to the desires of the parties, possible delay and expense, the burden of proof, the complexity of the issues, and the number and location of witnesses. ()

02. Continuance. The appeals examiner may postpone or continue a hearing for good cause on the examiner's own motion or that of any party, before a hearing is concluded. The appeals examiner may dismiss an appeal for good cause, such as abandonment of the appeal. ()

03. Rehearing. An application for rehearing will be in writing and filed in person or postmarked within ten (10) days after the appeals examiner's decision is served. ()

04. No Appearance Hearings. If no party appears to present additional evidence, a decision may be based on the existing record. For this purpose, the existing record will consist of documents maintained by the Department in the ordinary course of adjudicating the issues in the case, copies of which are provided to the parties with the notice of hearing. ()

05. Exhibits and Recordings. Hearing exhibits and recordings may be destroyed, reused, or otherwise disposed of after the expiration of the time period for appeal from the decisions of the appeals examiner. ()

06. Subpoenas. After determining a subpoena of a witness or records is necessary and reasonable, the appeals examiner will issue the subpoena, which may be served by mail or in person. ()

07. Failure to Respond to Subpoena. If a person fails to respond to a subpoena issued by mail, the appeals examiner will proceed with the scheduled hearing and determine, after hearing available testimony, whether the subpoena is still necessary and reasonable. If so, the hearing will be continued and a second subpoena will be issued and personally served. ()

08. Witness Fees. Individuals who attend hearings before the appeals examiner as subpoenaed witnesses, not parties, are entitled to receive a fee of seven dollars and fifty cents (\$7.50) for each day or portion thereof for attendance. In no case will a witness be paid more than seven dollars and fifty cents (\$7.50) for any one (1) day. Subpoenaed witnesses are entitled to mileage expense at the current allowable mileage reimbursement rate as determined by the Idaho State Board of Examiners. For appeals under the Employment Security Law, such witness

fees and mileage expenses will be paid from the Employment Security Administration fund. Under no circumstances will interested parties to a hearing be granted witness fees or mileage expenses. Mileage fees are not allowed for vicinity travel. ()

09. Undecided Issues. When it is apparent that there is no prior ruling on an issue that must be decided under the Act, the appeals examiner may hear and decide the issue. ()

10. Type of Hearing. The proceeding before an appeals examiner will be a hearing “de novo” or original hearing and not solely a review proceeding. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. ()

11. Role of Appeals Examiner. The appeals examiner will function as a fact finder and not solely as a judge. The appeals examiner will have the responsibility of developing all the evidence that is reasonably available. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. ()

12. Order of Witnesses. The appeals examiner, in the exercise of reasonable discretion, will direct the order of witnesses and develop evidence in a logical and orderly manner to move the hearing along as expeditiously as possible. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. ()

13. Evidence. The appeals examiner may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of this state. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. ()

14. Disruptive Individuals. The appeals examiner may exclude disruptive individuals from the hearing or may postpone the hearing if the integrity of the proceedings is being compromised. If an interested party is excluded, they will be provided a copy of the recording of the proceedings and given an opportunity to submit written evidence and argument prior to the issuance of the decision and the opposing party will be given an opportunity to respond. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. ()

15. Challenge of General Knowledge. If judicially cognizable facts or general, technical, or scientific facts within the appeals examiner's specialized knowledge are used in the decision, the parties will be given an opportunity to challenge them at the time of the hearing, or at the time of the issuance of the decision. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. ()

16. Closing Arguments. Closing arguments will be limited to five (5) minutes for each party unless the appeals examiner grants an exception. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. ()

046. COMMUNICATION WITH APPEALS STAFF.

No party involved in an appeal may communicate, either directly or indirectly, with appeals examiners, the Chief of the Appeals Bureau, or clerical staff of the Appeals Bureau, regarding any issue of fact or law relevant to an appeal, unless all parties involved have been provided notice and an opportunity to participate in such communication. No person acting on behalf of any party, including the Idaho Department of Labor, may attempt to influence the disposition of an appeal through such communications. No appeals examiner may knowingly cause a communication prohibited by this section to be made. ()

01. Prohibition of Ex Parte Contacts. The prohibition on ex parte contacts contained in this rule applies from the time an appeal is filed pursuant to IDAPA 09.01.01.025 or IDAPA 09.01.01.027 until the appeal becomes final and conclusive pursuant to Sections 72-1368 and 45-617, Idaho Code. ()

02. Issues of Fact. As used in this rule, the term “issue of fact or law relevant to an appeal” includes any matter relating to the merits of an appeal but does not include questions of appeals procedure or case status inquiries. Parties may not direct questions of appeals procedure or case status inquiries to the appeals examiner assigned to their case but rather to other appeals examiners, the Chief of the Appeals Bureau (unless he or she is functioning as the appeals examiner in the case), or to clerical staff of the Appeals Bureau. ()

03. Reporting Prohibited Contacts. An appeals examiner or other Appeals Bureau employee who receives a communication prohibited by this rule must place in the record of the case all such written communications

or a memorandum stating the substance of all such oral communications. The Appeals Bureau must send a full copy of the communication to other interested parties to the appeal and allow an appropriate time for the parties to respond. ()

047. – 059. (RESERVED)

060. INDUSTRIAL COMMISSION REVIEW OF APPEALS EXAMINER DECISIONS.

01. Claim for Review Under the Employment Security Law. A claim for review of the appeals examiner's decision, as provided in Section 72-1368, Idaho Code, must be made in writing, signed by the person claiming the review or by his attorney or agent, and filed with the Idaho Industrial Commission in accordance with rules adopted by the Commission. Ref. Sec. 72-1368(7) Idaho Code. ()

02. Transcripts. Upon receipt of a notice that a claim for review has been filed with the Industrial Commission, a true and correct transcript of the recorded proceedings must be prepared if ordered by the Commission. Copies of transcripts or recording of the proceedings, together with exhibits received in the case, must be transmitted by the Department to the Commission and provided to all interested parties without charge. ()

061. – 064. (RESERVED)

065. JUDICIAL REVIEW OF WAGE CLAIM DECISIONS.

A claimant or employer aggrieved by a final decision of the appeals examiner in a wage claim proceeding may seek judicial review of the decision pursuant to Title 67, Chapter 52, Idaho Code, and Section 45-619, Idaho Code, by timely filing a petition for judicial review in a court of competent jurisdiction. The Department is not an aggrieved party for purposes of any judicial review proceeding and will not be made a party in any petition for judicial review. The proper parties in a petition for judicial review are the claimant and the employer. ()

066. – 999. (RESERVED)

09.01.08 – RULES ON DISCLOSURE OF EMPLOYMENT SECURITY INFORMATION

000. LEGAL AUTHORITY.

These rules are promulgated under Sections 72-1333 and 72-1342, Idaho Code.

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001. TITLE AND SCOPE.

01. **Title.** IDAPA 09.01.08, “Rules on Disclosure of Employment Security Information.”

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02. **Scope.** These rules address disclosure by the Department of employment security information, as defined in Section 74-106(7), Idaho Code. These rules comply with the requirements of 20 CFR Part 603, “Confidentiality and Disclosure of State Unemployment Compensation Information,” and the Idaho Public Records Act.

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002. (RESERVED)

003. ADMINISTRATIVE APPEALS.

There is no administrative appeal under this chapter. Appeals of denials of requests for Department records are governed by the provisions of the Idaho Public Records Act.

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004. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Agent.** One who acts for or in the place of an individual or employer by the authority of that individual or employer.

(5-8-09)

02. **Employment Security Law.** The act codified at Title 72, Chapter 13, Idaho Code.

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03. **Payment in Advance.** Full payment of all costs before or at the time that employment security information is disclosed to a recipient.

(5-8-09)

04. **Public Official.** In accordance with Section 72-1342, Idaho Code, a “public official” is an official, elected official, or a contractor thereof in or for a federal, state, or local government, agency, or public entity within the executive branch of federal, state, or local government, who has responsibility for administering or enforcing a law, including research related to administration of a law.

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05. **Public Records Act.** The act codified at Title 74, Chapter 1, Idaho Code.

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011. ACCESS BY PERSONS TO INFORMATION PERTAINING TO THEM.

01. **Individual or Employer.** Individuals or employers may access employment security information pertaining to them, subject to the procedures and restrictions contained in the Idaho Public Records Act and reimbursement provisions in Section 020 of these rules. Unless the disclosure is for the purposes of the Employment Security Law, the Department will not comply with requests for disclosure of records to an individual or employer on an ongoing basis, and only existing records in the Department’s custody as of the date of receipt of the request will be disclosed, not records that may be created in the future.

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02. **Attorney.** An attorney representing a party for the purposes of the Employment Security Law need only submit a letter on letterhead to the Department confirming the attorney’s representation of the party, for an Employment Security Law purpose, to access any employment security information that would be available to the attorney’s client. If the attorney is not representing the client for the purposes of the Employment Security Law, the attorney must provide an informed consent release, in the same manner and with the same restrictions as an agent in Subsection 011.04 of these rules, in order to access any employment security information that would be available to the client.

(5-8-09)

03. **Elected Official.** An elected official performing constituent services who requests employment security information on behalf of an individual or employer may access any employment security information related to the inquiry and available to the constituent if the elected official presents reasonable evidence the constituent authorized the disclosure. Such reasonable evidence may include a letter or written record of a telephone request for assistance from the constituent.

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04. Agent. In order to access any employment security information available to the individual or employer, an agent of an individual or employer must provide an informed consent release that meets the requirements of Subsection 013.01 of these rules. If the disclosure is for the purposes of Employment Security Law and it is impossible or impracticable to obtain an informed consent release, the agent must provide clear and convincing evidence, as determined by the Department, that the agent is authorized to act on behalf of the individual or employer in order to access any employment security information available to the individual or employer. Unless the disclosure is for the purposes of the Employment Security Law, the Department will not comply with requests for disclosure of records to an agent on an ongoing basis, and only existing records in the Department's custody as of the date of receipt of the request will be disclosed pursuant to the informed consent release, not records that may be created in the future. ()

012. DISCLOSURE TO PUBLIC OFFICIALS.

Employment security information may be disclosed by the director or the director's authorized representative to the following public officials or to an agent or contractor of the following public officials, for use in the performance of official duties: (5-8-09)

01. Required by Federal Law. Any public agency to whom the Department is required by federal law to disclose information, under the terms and restrictions required by federal law; (5-8-09)

02. Reciprocal Disclosures. Any public agency where reciprocal disclosures from such agency to the Department will reasonably assist in the collection of contributions and payments in lieu of contributions. (5-8-09)

03. Benefit to Department. Any public agency to whom disclosure of Department information would be consistent with the mission of the Department or of benefit to the Department, as determined by the director. (5-8-09)

04. Written Agreement. Any release of information to public officials under Subsections 012.02 and 012.03 of these rules must be pursuant to a written agreement signed by the requesting agency director or their authorized representative and the director of the Department. If an agent or contractor is to obtain or access information on behalf of a requesting agency, the requesting agency director or the director's authorized representative must sign the agreement. The requesting agency will be responsible for ensuring the agent or contractor complies with all security requirements of the agreement. ()

05. Terms and Conditions of Written Agreement. The interagency agreement must contain the following provisions: (5-8-09)

a. A description of the specific information to be furnished by the Department and the purpose(s) for which the information is sought and will be used; (5-8-09)

b. A statement that those who request or receive information under the agreement will be limited to those individuals, identified by name or job title, or both, with a need to access for purpose(s) specified in the agreement; (5-8-09)

c. Methods and timing, if the disclosure is to be made more than once, including the format to be used; (5-8-09)

d. Provisions for timely payment of the Department's billed costs as required by Subsection 020.02 of these rules, including the Department's costs of performing on-site inspections to ensure compliance with State and Federal law and agreement requirements; ()

e. Provisions for safeguarding the information disclosed, including the following requirements: (5-8-09)

i. Recipient will use the information only for purposes authorized by law and specified in the agreement; (5-8-09)

ii. Recipient will store the information in a place physically secure from access by unauthorized

persons; (5-8-09)

iii. Recipient will store and process the information maintained in electronic format in a way that unauthorized persons cannot obtain the information by any means; (5-8-09)

iv. Recipient will undertake precautions to ensure only authorized personnel have access to the information stored in computer systems; ()

v. Recipient will instruct and have all personnel with access to the information sign an acknowledgment they will adhere to the agreement's confidentiality requirements; understand the civil and criminal penalties in Sections 72-1372 and 72-1374, Idaho Code for unauthorized disclosure of information; and will fully and promptly report to the Department any breach of the confidentiality requirements; ()

vi. Except for any information possessed by any court, Recipient will dispose of the information and any copies made by the requesting agency or its agent or contractor after the purpose of the disclosure has been served, and will not retain the information with personal identifiers for any longer period of time than the Department deems appropriate; and ()

vii. Recipient will redisclose the information only as provided in the agreement or as required by State or Federal law. (5-8-09)

f. Provisions for on-site inspections of the requesting agency and/or its agent or contractor by the Department to ensure compliance with State and Federal law and the requirements of the agreement; (5-8-09)

g. Provisions that stipulate the Department determines the requesting agency or its agent or contractor is not adhering to the requirements of the agreement, including timely payment of the Department's billed costs, any and all further disclosures will immediately be suspended until the Department is satisfied corrective action has been taken and there will be no further breach; ()

h. Provisions for terminating this agreement if, after a breach of the agreement, prompt and satisfactory corrective action is not taken, and for the immediate surrender to the Department of all employment security information, including copies in any form, obtained under the agreement by the requesting agency and/or its agent or contractor; and (5-8-09)

i. Provisions for the Department to take any remedial action permitted under State or Federal law to enforce the agreement, including seeking damages, penalties, restitution, attorneys fees and costs incurred by the Department for pursuit of any breaches of the agreement and required enforcement. (5-8-09)

06. Exception for Certain Federal Agencies. These requirements do not apply to disclosures of employment security information to a Federal agency which the U.S. Department of Labor has determined, by notice in the Federal Register, to have in place safeguards adequate to satisfy the confidentiality requirement of Section 303(a)(1) of the Social Security Act, and an appropriate method of paying or reimbursing the Department for any costs involved in such disclosures. (5-8-09)

07. Safety Concerns. Employment security information may be disclosed to a public official contacted for assistance when the safety of Department staff or property may be at risk. Such disclosures are considered necessary for the proper administration of programs under the Employment Security Law and may be made without a written agreement or a subpoena from the public official. (5-8-09)

013. DISCLOSURE TO THIRD PARTIES WITH WRITTEN, INFORMED CONSENT.

A person may agree, through written, informed consent, to allow a third party to obtain employment security information pertaining to the person from the Department, subject to the following terms and conditions: (5-8-09)

01. Informed Consent Release. (5-8-09)

a. An informed consent release must be signed by the person providing informed consent and dated within one (1) year of the date of the request for access to the records. (5-8-09)

- b.** In the document, the person providing informed consent must: (5-8-09)
 - i.** Identify the specific records to be disclosed; (5-8-09)
 - ii.** Acknowledge Department files will be accessed to obtain the records; (5-8-09)
 - iii.** List all third parties authorized to access the person's information; and (5-8-09)
 - iv.** Indicate specific purpose(s) of the disclosure and state the records will be used only for the specified purpose(s). If the disclosure is not for purposes of the Employment Security Law, the purpose(s) specified must provide a service or benefit to the person providing informed consent or to administer or evaluate a public program to which informed consent release pertains. ()

c. Unless disclosure is for the purposes of the Employment Security Law, the Department will not comply with disclosure requests to a third party on an ongoing basis. Only existing records in the Department's custody as of the date of receipt of the request will be disclosed pursuant to the informed consent release, not records that may be created in the future. ()

02. Agreement by Third Party. Before the Department will disclose employment security information to a third party pursuant to an informed consent release, the third party must sign an agreement containing the following provisions: (5-8-09)

a. A description of the specific information to be furnished by the Department and the purpose(s) for which the information is sought and will be used, as specified in the informed consent release; (5-8-09)

b. A statement that those who request or receive information under the agreement will be limited to those individuals, identified by name, with a need to access it for the purpose(s) specified in the informed consent release; (5-8-09)

c. The method for the disclosure, including format; (5-8-09)

d. Provisions for payment of the Department's costs of disclosure as required by Subsection 020.02 of these rules, including the Department's costs of performing audits to ensure compliance with State and Federal law and the requirements of the agreement; (5-8-09)

e. Provisions for safeguarding the information disclosed, including the following requirements: (5-8-09)

- i.** Recipient will use the information only for purposes authorized by law and specified in the informed consent release; (5-8-09)

- ii.** Recipient will store the information in a place physically secure from access by unauthorized persons; (5-8-09)

- iii.** Recipient will store and process the information maintained in electronic format in such a way unauthorized persons cannot obtain the information by any means; (5-8-09)

- iv.** Recipient will undertake precautions to ensure only authorized personnel have access to the information stored in computer systems; (5-8-09)

- v.** Recipient will instruct and have all personnel with access to the information sign an acknowledgment that they will adhere to the agreement's confidentiality requirements; understand the civil and criminal penalties in Sections 72-1372 and 72-1374, Idaho Code for unauthorized disclosure of information; and will fully and promptly report to the Department any breach of the confidentiality requirements. ()

- vi.** Except for any information possessed by any court, Recipient will dispose of the information and

any copies made by the requesting agency or its agent or contractor after the purpose of the disclosure has been served, and will not retain the information with personal identifiers for any longer period of time than the Department deems appropriate; and ()

vii. Recipient will redisclose the information only as authorized under informed consent release and for purpose(s) specified in the release or as required by State or Federal law. (5-8-09)

f. Provisions for on-site audits of the recipient by the Department as the Department may deem necessary to ensure compliance with State and Federal law and agreement requirements; (5-8-09)

g. Provisions for the immediate suspension of the agreement if the Department determines that the recipient is not adhering to the requirements of the agreement; (5-8-09)

h. Provisions for termination of the agreement if, after a breach of the agreement prompt and satisfactory corrective action is not taken, and for immediate surrender to the Department of all employment security information, including copies in any form, obtained under the agreement by the recipient; (5-8-09)

i. Acknowledgment by recipient the agreement is governed by the laws of the State of Idaho, and civil and criminal penalties in Sections 72-1372 and 72-1374, Idaho Code, apply to any unauthorized disclosure of information no matter where the unauthorized disclosure may occur; and (5-8-09)

j. Provisions for the Department to take any remedial action permitted under State or Federal law to enforce the agreement, including seeking damages, penalties, restitution, and attorneys fees and costs incurred by the Department for any breaches of the agreement and required enforcement. (5-8-09)

03. Department's Right to Audit. After a third party receives employment security information pursuant to an informed consent release, the Department may perform an on-site audit of the third party to ensure the information is used for authorized purposes only. ()

014. -- 019. (RESERVED)

020. COSTS OF DISCLOSURE.

Unless the disclosure of employment security information is for the purposes of the Employment Security Law, the party requesting the disclosure must reimburse the Department's costs of disclosure, including staff time and processing costs, as follows: (5-8-09)

01. Private Party. If the requestor is not a public official, reimbursement must be in advance to the Department unless the disclosure involves an incidental amount of staff time and nominal processing costs. ()

02. Public Official. If the requestor is a public official, payment to reimburse the Department may be made in advance or by way of billing invoice, as determined by the director, unless the disclosure involves only an incidental amount of staff time and nominal processing costs or there is a reciprocal cost arrangement with the public official. The Department may enter into a reciprocal cost arrangement with a public official when the relative benefits received by each agency through information sharing are approximately equal. (5-8-09)

021. SUBPOENAS OF EMPLOYMENT SECURITY INFORMATION.

01. Subpoena from Public Official. Employment security information may be supplied to a public official with subpoena authority after the Department receives a subpoena that is reasonable in nature and scope from the public official. This provision does not apply to subpoenas served on behalf of private parties to civil or criminal proceedings to which the Department is not a party. (5-8-09)

02. Subpoena from Private Party. If the Department is served with a subpoena on behalf of a private party to a civil or criminal proceeding to which the Department is not a party and the private party is not entitled to access the information pursuant to Section 011 of these rules, the Department will move to quash the subpoena and attempt to recover costs if other means of avoiding unauthorized disclosure of the information have been unsuccessful or the court has not already ruled on the disclosure. (5-8-09)

022. RECORDS REQUESTS SUBMITTED BY ELECTRONIC MAIL.

The Department will only accept records requests sent via e-mail to records_requests@labor.idaho.gov, unless an alternate method of transmittal is necessary to comply with applicable law or the request is for employment security information. Records requests sent to any other Department electronic mail address will not be accepted. A person making a records request must include the requestor's name, mailing address, and telephone number. If the request is for employment security information, the person may be required to provide identification to the Department. For security reasons, the Department will not disclose employment security information via electronic mail. ()

023. -- 999. (RESERVED)

09.01.30 – UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

000. LEGAL AUTHORITY.

These rules are promulgated under Section 72-1333, Idaho Code.

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001. TITLE AND SCOPE.

01. **Title.** IDAPA 09.01.30, “Unemployment Insurance Benefits Administration Rules.”

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02. **Scope.** These rules govern claims for unemployment insurance benefits.

(3-19-99)

002. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter are governed by Section 72-1368, Idaho Code and IDAPA 09.01.01, “Rules of Administrative Procedure of the Department of Labor.”

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004. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Additional Claim.** An initial claim made after a period of employment subsequent to a new claim in the same benefit year.

(3-19-99)

02. **Average Annual Wage.** For the purpose of determining the taxable wage base, under Section 72-1350(1), Idaho Code, the average annual wage is computed by dividing that calendar year’s total wages in covered employment, excluding State government and cost reimbursement employers, by the average number of workers in covered employment for that calendar year as derived from data reported to the Department of Labor by covered employers.

(3-19-99)

03. **Average Weekly Wage.** For the purpose of establishing the maximum weekly benefit amount, under Section 72-1367(2)(a), Idaho Code, the average weekly wage is computed by dividing the total wages paid in covered employment (including State government and cost reimbursement employers) for the preceding calendar year, as computed from data reported to the Department of Labor by covered employers, by the monthly average number of workers in covered employment for the preceding calendar year and then dividing the resulting figure by fifty-two (52).

(4-11-06)

04. **Central Claims Office.** A claims office designated by the director, where unemployment claims throughout the state are processed.

(3-28-18)

05. **Chargeability Determination.** A determination issued with respect to whether a covered employer’s account will be charged for benefits paid on a claim.

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06. **Claim.** An application for unemployment insurance or “benefits.”

(3-19-99)

07. **Continued Claim.** An application for waiting-week credit or for benefits for specific compensable weeks.

(3-19-99)

08. **Corporate Officer.** Any individual empowered in good faith by stockholders or directors in accordance with the corporation’s articles of incorporation or bylaws to discharge the duties of a corporate officer.

(4-4-13)

09. **Fraud Overpayment.** An established overpayment resulting from a determination that the claimant willfully made a false statement or willfully failed to report a material fact in order to obtain benefits. Ref. Sec. 72-1369, Idaho Code.

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10. **Full-Time Employment.** A week of full-time employment is one where the claimant worked what are customarily considered full-time hours for that industry or where the earnings were more than one and one half (1-1/2) times his weekly benefit amount.

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11. **Initial Claim.** The first claim for benefits made by an unemployed individual during a continuous period of unemployment. An initial claim may be either new or additional.

(3-19-99)

12. **Interstate Claim.** A claim filed by a worker who resides in a state other than the state (or states) in

which he has earned wages in covered employment. (3-19-99)

13. Intrastate Claim. A claim filed by a worker who resides in Idaho and has earned wages within or as federal wages assigned to Idaho. ()

14. Material. A fact is material if it is relevant to a determination of a claimant's right to benefits. All information a claimant is asked to provide when applying for unemployment benefits or when making a continued claim report is material and relevant to a determination of a claimant's right to benefits. To be considered material, the fact need not actually affect the outcome of an eligibility determination. Ref. Section 72-1366, Idaho Code. ()

15. Monetary Determination. A determination of eligibility which lists a claimant's base period employer(s) and wages and establishes, if the claimant is eligible, his benefit year, his weekly benefit amount, and his total benefit amount. (3-19-99)

16. New Claim. The first initial claim made in a benefit year. (3-19-99)

17. Non-Fraud Overpayment. Any established overpayment other than an overpayment resulting from a determination that a claimant made a false statement or willfully failed to report a material fact in order to obtain benefits. Ref. Sec. 72-1369, Idaho Code. ()

18. Non-Monetary Determination. A determination issued by a claims examiner with respect to the personal eligibility conditions of a claimant. (3-19-99)

19. Tolerance Amount. A tolerance of four dollars and ninety-nine cents (\$4.99) connection with the recovery of overpayments and at the discretion of the Director, overpayments for this amount or less may be compromised. Ref. Sec. 72-1369, Idaho Code. ()

011. -- 099. (RESERVED)

100. ABLE TO WORK.

"Able to work" is the physical and mental ability to perform work under conditions ordinarily existing during a normal workweek. It does not mean that a person must be able to perform work in his customary occupation or the same kind of work he last performed. Ref. Sec. 72-1366(4), Idaho Code. ()

01. Able to Perform Some Type of Work. A person must be able to perform work of some type for which he can qualify at the time he files an initial claim for unemployment insurance. ()

02. Able to Work Part-Time. A person who is able to work only part of the workday or part of the workweek is not considered "able to work" for the purposes of Section 72-1366(4), Idaho Code. This rule does not apply to claimants who establish eligibility under the Americans with Disabilities Act. (3-19-99)

03. Disability Compensation. A claimant's receipt of disability compensation does not in itself establish that he is unable to work or unavailable for work, even though the payee has been declared totally disabled. (3-19-99)

04. Illness Provision. A person who claims benefits under the illness provision must remain available for job referral; however, he may leave the area for treatment of his illness and continue to be eligible under the illness provision. ()

05. Illness Provision as Applied to Transitional or Reopened Claim. The illness provision will continue to apply even though the current benefit year has ended and a transitional claim is filed the following year or the claim is reopened after a period of not filing with no intervening employment. ()

06. Withdrawing from Labor Market Because of Illness. A claimant who withdraws from the labor market because of illness or injury prior to filing a claim is not eligible until he is able and available for work. ()

101. -- 124. (RESERVED)

125. ALIEN ELIGIBILITY.

01. Alien Eligibility. Benefits are not payable based on services performed by an alien unless the alien was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time the services were performed. Ref. Sec. 72-1366(19), Idaho Code. (3-19-99)

02. Benefit Eligibility. To be eligible for benefits, an alien must fall within one (1) of the following three (3) categories at the time the work on which the claim is based was performed. In addition, at the time benefits are claimed, the alien must have current, valid authorization to work from the Immigration & Naturalization Service in order to meet the continuing eligibility requirement of being able and available to work (unless the alien claimant is a Canadian resident who is claiming benefits under the Interstate Benefit Payment Plan, in which case the claimant must satisfy only Canadian availability requirements). Ref. Sec. 72-1366(4), (19), Idaho Code. (3-19-99)

a. Permanent Residence. The category of individuals who are “lawfully admitted for permanent residence,” includes aliens who have been lawfully admitted to the United States as “immigrants” and those whose status has been adjusted from that of “non-immigrant” under the Immigration and Nationality Act. Evidence of this status is the Alien Registration Receipt Card, or “green card,” issued to each lawful permanent resident by the Immigration and Naturalization Service. (3-19-99)

b. Performing Services. The category of individuals who are “lawfully present for purposes of performing services” includes three (3) groups of aliens: (3-19-99)

i. Canadian and Mexican residents who commute daily or seasonally and are authorized to work in the United States; (3-19-99)

ii. Legally-admitted non-immigrants who are granted a status by the Immigration and Naturalization Service which authorizes them to work in the United States during their stay; and (3-19-99)

iii. Other aliens with Immigration and Naturalization Service authorization to work in the United States regardless of their status. (3-19-99)

c. Permanently Residing Under Color of Law. The category of individuals who are “permanently residing in the United States under color of law” includes the following groups of aliens: (3-19-99)

i. Refugees and parolees, as identified in the Immigration and Nationality Act; (3-19-99)

ii. Aliens presumed by the Immigration and Naturalization Service to be lawfully admitted for permanent residence; and (3-19-99)

iii. Aliens who, after review of their particular circumstances under INS statutory or regulatory procedures, have been granted a status which allows them to remain in the United States for an indefinite period of time. For informal Immigration and Naturalization Service action to authorize an alien’s residence under “color of law,” the Immigration and Naturalization Service must know of the alien’s presence, and must provide the alien with official, documented assurance that enforcement of deportation is not planned. (3-19-99)

126. -- 149. (RESERVED)

150. AMERICANS WITH DISABILITIES ACT (ADA).

An individual with a medically verifiable long term or permanent physical or mental disability (as defined at 29 C.F.R. Sec 1630.2(g)) that prevents the individual from working full time or during particular shifts is not deemed unable to work or unavailable for work for so long as he is able to perform some work and remains available for work to the full extent of his ability. Claimants meeting the above criteria must be exempt from complying with eligibility requirements found elsewhere in these Rules which would be in conflict with the intent of this provision. (3-19-99)

01. Availability Requirement. For purposes of this rule, a claimant with a disability will be considered

as having complied with the requirement of being available for work if he is willing to work the maximum number of hours that he has established through medically verifiable evidence that he is able to work. (3-19-99)

02. Full-Time Employment. An individual claiming benefits under this provision will be considered fully employed and ineligible to receive benefits in any week that the individual works the maximum number of hours that he is able to work. (3-19-99)

03. Long Term. For purposes of this rule, “long term” is defined as twelve (12) months or longer. (3-19-99)

151. -- 174. (RESERVED)

175. AVAILABLE FOR WORK.

“Available for work” is a state of mind that encompasses a readiness and willingness to work, and a desire to find a job, including the possibility of marketing one’s services in the claimant’s area of availability. There must remain a reasonable possibility of a claimant finding and obtaining, or being referred and hired for, suitable work. Ref. Sec. 72-1366(4), Idaho Code. ()

01. Availability Requirements. The type of work for which the claimant is available must exist in the claimant’s area to the extent that a normal unemployed person would generally find work within a reasonable period of time. (3-19-99)

02. Child Care. Child care must be arranged so as not to restrict a claimant’s availability for work or for seeking work. (3-19-99)

03. Compelling Personal Circumstances. Compelling personal circumstances mean: ()

a. A situation in which the claimant required the assistance of emergency response personnel; (4-11-06)

b. The serious illness, death, or funeral of an immediate family member; or (4-11-06)

c. The wedding of the claimant or an immediate family member. (4-11-06)

d. Under this rule, “immediate family member” means a claimant's spouse, child, foster child, parent, brother, sister, grandparent, grandchild, or the same relation by marriage. ()

e. Under this rule, “workweek” is defined: ()

i. Code R, U, or X. The claimant's normal workweek as defined by the employer. ()

ii. Code B. Monday through Friday, 8 a.m.-5 p.m. ()

iii. Code D. Regular class hours. ()

f. Claimant work availability requirements are waived on Independence Day, Thanksgiving Day, Christmas Day, and New Year's Day. ()

04. Conscientious Objection. No person may be held to be unavailable for work solely because of religious convictions not permitting work on a certain day. (3-19-99)

05. Contract Obligation. A person who is bound by a contract that prevents him from accepting other employment is not eligible for benefits. (3-19-99)

06. Distance to Work. A claimant seeking work must be willing to travel the distance normally traveled by other workers in his area and occupation. (3-19-99)

07. Domestic Circumstances. A claimant is not eligible for benefits if domestic circumstances take precedence over the claimant's availability for work or for seeking work. (3-19-99)

08. Equipment. Claimants will be required to provide necessary tools or equipment in certain occupations. The lack of these tools or equipment will directly affect a claimant's availability for work, unless he will accept other work. (3-19-99)

09. Experience or Training. A claimant is expected to be available for work consistent with his past experience or training, provided there is no change in his ability to perform that work. (3-19-99)

10. Full-Time/Part-Time Work. To be eligible for benefits, a claimant must be available for a full workweek and a full, normal workday unless the claimant establishes that a majority of the weeks worked in his base period were for less than full-time work or the claimant establishes eligibility under the Americans with Disabilities Act. An individual who restricts his availability to part-time work pursuant to Section 72-1366(4)(c), Idaho Code, will be considered fully employed and ineligible to receive benefits if the individual works hours comparable to his part-time work experience in his base period. (3-29-10)

11. Incarceration/Work Release. A claimant who is incarcerated for any part of the workweek is not eligible for benefits for that week, unless the claimant can establish he has work release privileges which would provide him a reasonable opportunity to meet his work search requirements and obtain full-time employment. ()

12. Jury Duty/Subpoenas. A claimant serving on jury duty or subpoenaed is excused from the availability and work-seeking requirements of the law for that time period, and may refuse work that would commence during that time period. ()

13. Licensing or Government Restrictions. A claimant prohibited by law from engaging in certain work must be available for other employment to be eligible for benefits. (3-19-99)

14. Moving to Remote Area. A claimant who moves to a remote locality where there is very little possibility of obtaining work will be ineligible for benefits. (3-19-99)

15. Public Official. A public official who receives pay and performs "full-time" service is not unemployed or eligible for benefits. Part-time officials, even though receiving pay, may be considered available for work the same as any other individual employed on a part-time basis. Ref. Sec. 72-1312(1). (3-19-99)

16. Public Service. Performing public service, including voluntary non-remunerated service, does not disqualify an individual for benefits as long as he is meeting the availability and work-seeking requirements. (3-19-99)

17. Restricting Work to Within the Home. A claimant who restricts his availability to only work done within the home which severely limits the work available to him is ineligible for benefits. (3-19-99)

18. School Attendance or a Training Course. A person who is attending school or a training course may be eligible for benefits if the attendance does not conflict in any way with that person's availability for work or for seeking work and if he will discontinue attendance upon receipt of an offer of employment that creates a conflict between employment and the schooling or training. ()

19. Temporary Absence from Local Labor Market to Seek Work. All claimants, regardless of their attachment to an industry or employer, must meet the same standard of remaining within their local labor market area during the workweek in order to be considered available for work, unless the primary purpose of a temporary absence is to seek work in another labor market; provided, however, claimants otherwise eligible to receive benefits while participating in an approved training program or course are not deemed ineligible when the training or course occurs outside of their local labor market due to the unavailability of similar programs or courses within their local labor market. ()

20. Transportation Difficulties. Lack of transportation is not a bona fide reason for a claimant to fail to be available for or to seek work. Transportation is the responsibility of the claimant. (3-19-99)

21. Unreasonable Restrictions on Working Conditions. A claimant who places unreasonable restrictions on working conditions so as to seriously hinder his availability and search for work is ineligible for benefits. (3-19-99)

22. Vacation. A person on a vacation approved by his employer during time when work is available is not eligible for benefits. ()

23. Wages. A claimant is eligible for benefits if the wages or other conditions of available work are substantially less favorable to the claimant than those prevailing for similar work in the local area. Ref. Sec. 72-1366(7)(b), Idaho Code. ()

a. Demanding Higher Wages. A claimant is ineligible for benefits if he unduly restricts his availability for work by insisting on a wage rate that is higher than the prevailing wage for similar work in that area. (3-19-99)

b. Prior Earnings. The claimant's prior earnings and past experience are considered in determining whether he is available for suitable work. (3-19-99)

24. Waiver of Two-Year Training Limitation. A waiver under Idaho Code Section 72-1366(8)(c)(ii) for claimants who lack skills to compete in the labor market requires: ()

a. Financial Plan. The claimant must demonstrate a workable financial plan for completing the school or training course after his benefits have been exhausted. (3-19-99)

b. Demand for Occupation. The claimant must establish there is a demand for the occupation in which the claimant will be trained. A "demand occupation" is one in which work opportunities are available and there is not a surplus of qualified applicants. (3-19-99)

c. Duration of Training. At the time that the claimant applies for the waiver, the duration of the school or training course is no longer than two (2) years to completion. (3-19-99)

d. Denial. No claimant will be denied a waiver of the two (2) year limitation on school or training because the claimant is already enrolled or participating in the school or training at the time he requests the waiver. ()

176. -- 199. (RESERVED)

200. CANCELING CLAIMS.

Upon the written request of a claimant, a claim may be canceled at any time, provided that the claimant did not misrepresent or fail to report a material fact in making the claim and the claimant has repaid any benefits received on the claim, unless the benefits received will be offset from a new claim the claimant is filing. Ref. Sec. 72-1327A, Idaho Code. (3-19-99)

201. -- 224. (RESERVED)

225. DECEASED CLAIMANTS.

Upon the death of a benefit claimant who has completed a compensable period prior to his death, distribution of benefits due him will be made to the surviving spouse or, if none, to the dependent child or children. If there is no surviving spouse nor dependent child or children, the benefits become the property of the claimant's estate. (3-29-10)

226. -- 249. (RESERVED)

250. DETERMINATIONS/APPELLATE PROCESSES.

01. Rebuttal Procedure. Whenever any information is provided in response to a claim, and the information contradicts a statement made previously, all interested parties will be given an opportunity for rebuttal. Ref. Sec. 72-1368(3), Idaho Code. (3-19-99)

02. Reestablishing Eligibility After a Determination of Ineligibility. Evidence of requalifying wages includes, but is not limited to, the name of the employer, the mailing address, the dates of employment, the type of employment performed, and the claimant's gross earnings. Ref. Sec 72-1366(14), Idaho Code. ()

251. -- 274. (RESERVED)

275. DISCHARGE.

01. Burden of Proof. The burden of proving that a claimant was discharged for employment-related misconduct rests with the employer. (3-19-99)

02. Disqualifying Misconduct. To disqualify a claimant for benefits, misconduct must be connected with the claimant's employment and involve one of the following: ()

a. Disregard of Employer's Interest. A willful, intentional disregard of the employer's interest. (3-19-99)

b. Violation of Reasonable Rules. A deliberate violation of the employer's reasonable rules. (3-19-99)

c. Disregard of Standards of Behavior. If the alleged misconduct involves a disregard of a standard of behavior which the employer has a right to expect of his employees, there is no requirement that the claimant's conduct be willful, intentional, or deliberate. The claimant's subjective state of mind is irrelevant. The test for misconduct in "standard of behavior cases" is as follows: (3-19-99)

i. Whether the claimant's conduct fell below the standard of behavior expected by the employer; and (3-19-99)

ii. Whether the employer's expectation was objectively reasonable in the particular case. (3-19-99)

03. Inability to Perform or Ordinary Negligence. Mere inefficiency, unsatisfactory conduct, failure of good performance as the result of inability or incapacity, inadvertencies, isolated instances of ordinary negligence, or good faith errors in judgment or discretion are not considered misconduct connected with employment. (3-19-99)

04. Non-Job Related Conduct. If the claimant was discharged for conduct involving personal, non-job related behavior, the discharge is not for misconduct connected with employment. ()

05. When Notice of Discharge Prompts a Resignation. If a claimant has resigned after receiving a notice of discharge (or lay off due to a lack of work), but before the effective date of the discharge, both "separations" must be considered. The following three (3) elements should be present for both actions to affect the claimant's eligibility: (3-19-99)

a. The employee was given notice by the employer of a specific separation date; (3-19-99)

b. The employee's decision to quit before the effective date of the termination was a consequence of the pending separation; and (3-19-99)

c. The voluntary quit occurred a short time prior to the effective date of the termination. (3-19-99)

06. Indefinite Suspension. A claimant who has been suspended without pay for an indefinite period of time, who has not been given a date to return to work, is considered discharged. ()

276. -- 324. (RESERVED)

325. EMPLOYEES OF EDUCATIONAL INSTITUTIONS.

01. Possibility of Employment. An offer of employment by an educational institution or service

agency is not “bona fide” if merely a possibility of employment exists. A possibility of employment, rather than a reasonable assurance, exists when: (3-19-99)

a. The circumstances under which the claimant would be employed are not within the control of the educational institution; and (3-19-99)

b. The educational institution does not provide evidence that such an individual normally would perform services the following academic year. (3-19-99)

02. Reasonable Assurance. “Reasonable assurance” of continuing employment exists when an educational institution or service agency provides an oral or written statement to the Department indicating that the claimant has been given a bona fide offer of a specific job in the second academic period. In addition, for such “reasonable assurance” to exist, the terms and conditions of the job offered in the second period must not be substantially less favorable than the terms and conditions of the job performed in the first period. (4-5-00)

03. Reasonable Assurance Later Given. A claimant who initially was determined not to have a reasonable assurance of continuing employment, will subsequently become disqualified for benefits under Sections 72-1366(17)(a), (b), or (c), Idaho Code, when an educational institution or service agency gives the claimant such reasonable assurance. ()

04. Retroactive Payments. A claimant seeking retroactive payments pursuant to 72-1366(17)(b), Idaho Code, must make a request for the retroactive payment with the Department no later than thirty (30) days after the beginning of the second school year or term or retroactive payment will not be made. In addition, the claimant must provide written evidence from the employer who previously provided reasonable assurance of continuing work, that the claimant was not offered an opportunity to return to work in the second of two (2) successive school years or terms. ()

05. Under Contract, but Between School Terms. Employees of educational institutions who are hired under contract for the school term, are considered unemployed between school terms even though they may receive their salary in twelve (12) monthly payments. (3-19-99)

326. -- 349. (RESERVED)

350. EXTENDED BENEFITS.
Ref. Sec. 72-1367A, Idaho Code. (3-19-99)

01. Evidence of Employment for Extended Benefits. Satisfactory evidence that an individual’s prospects for obtaining work in his customary occupation within a reasonably short period includes: (3-19-99)

a. A letter signed by a prospective employer giving assurances of work within the next four (4) weeks; or (3-19-99)

b. A verifiable, written statement by the claimant that he will have work within the next four (4) weeks. (3-19-99)

02. Remuneration Earned. Remuneration earned must be in employment where an employee-employer relationship exists to satisfy requalification requirements for Extended Benefits. (3-19-99)

351. -- 374. (RESERVED)

375. FULLY EMPLOYED/NOT UNEMPLOYED.
Ref. Section 72-1312(1), Idaho Code. (3-29-12)

01. Excessive Earnings Week. An excessive earnings week is a week in which the claimant’s wages allocable to that week are more than one and one half (1-1/2) times the claimant’s weekly benefit amount. (3-19-99)

02. Leave of Absence. A claimant who is on a mutually agreed upon leave of absence, and whose

employer has committed to the claimant's return to work at the end of the leave, is employed and not eligible for benefits. ()

03. Suspension. A claimant suspended with or without pay for a specific number of days, who has been given a date to resume employment after the suspension, is not considered unemployed and is not eligible for benefits. ()

04. Corporate Officer.

a. A corporate officer has the burden of proving by a preponderance of evidence that he is unemployed due to circumstances beyond his control or the control of a family member with an ownership interest in the corporation. ()

b. Circumstances beyond a corporate officer's control or the control of a family member with an ownership interest in the corporation. Circumstances beyond a corporate officer's or a family member's control are circumstances that last through the corporate officer's benefit year end date and include, but are not limited to, the following: (3-29-12)

i. Unemployment due to the corporate officer's removal from the corporation under circumstances that satisfy the personal eligibility conditions of Section 72-1366, Idaho Code; ()

ii. Unemployment due to dissolution of the corporation; or (3-29-12)

iii. Unemployment due to the sale of the corporation to an unrelated third party. (3-29-12)

376. -- 399. (RESERVED)

400. LABOR DISPUTE/UNION RULES.

A "labor dispute" is a controversy with respect to wages, hours, working conditions, or right of representation affecting the work or employment of a number of individuals employed for hire which results in a deadlock or impasse between the contending parties. Ref. Sec. 72-1366(7), (10), Idaho Code. ()

01. Burden of Proving Nonparticipation. The burden of proving non-participation, lack of financing and similar factors is upon the claimant. ()

02. Involvement of Work Site in Labor Dispute. A claimant will not be denied benefits because of a labor dispute if the dispute is not in any way directly connected with the factory, establishment, or premises at which the individual is or was last employed. ()

03. Lack of Work. A claimant's unemployment will be deemed due to lack work and not due to a labor dispute if it is shown that because of the labor dispute the employer's business has fallen off to the extent that he can no longer utilize the services of the claimant due to the drop in business. ()

04. Laid Off Before Labor Dispute. A claimant laid off because of lack of work from an employer where a labor dispute later occurred will not be considered unemployed due to the labor dispute. (3-19-99)

05. Period of Ineligibility. The period of ineligibility applies for the whole of any week in which any part of a claimant's unemployment is due to a labor dispute. (3-19-99)

06. Picketing Work Site. The act of picketing the work site of a labor dispute constitutes participation in the labor dispute, whether or not payment is made for such services. (3-19-99)

07. Refusal to Cross Picket Line. Voluntary refusal to cross a peaceable picket line to work constitutes participation in the labor dispute. (3-19-99)

08. Subsequent Employment. Subsequent employment does not make the claimant eligible for benefits if his unemployment is still due to the labor dispute. As long as the claimant intends to return to the employer

where the labor dispute exists, his unemployment is due to the labor dispute regardless of any intervening employment. (3-19-99)

09. Termination of Labor Dispute. The period of ineligibility due to the labor dispute terminates at the end of the calendar week in which the labor dispute no longer exists. The termination of the dispute does not automatically make a claimant eligible for benefits. (3-19-99)

10. Union Member. The fact that an individual is a dues-paying union member alone does not constitute financing a labor dispute. Nor does the fact that he is not a union member establish that he is not financing or participating in the dispute. (3-19-99)

401. -- 424. (RESERVED)

425. NEW CLAIMS/ADDITIONAL CLAIMS.
Ref. Sec. 72-1308, Idaho Code. (3-19-99)

01. Claims for Benefits, Delayed Filing. When the Central Claims Office has determined that a claimant's attempt to file an initial claim was delayed due to problems with the Department's telephone or electronic filing system, the claim may be backdated if the claimant reported the access problem to the Central Claims Office within seven (7) days of the date the problem occurred. When a claim is backdated, the continued claim report for the period of time involved is timely if filed during the same week or the next week after the claim is filed. ()

02. Effective Date of Backdated Claims. When the filing of an initial claim for benefits is backdated due to a Department system malfunction, the effective date is the Sunday of the week in which the claimant first reported to the Central Claims Office to file the claim or attempted to access the telephone or electronic claim filing system and there were problems with the system. (3-28-18)

03. Filing of New Claims, Additional, and Reopen Claims. Intrastate and interstate claims, including, without limitation, new claims, additional claims, and reopen claims, may be filed electronically or by telephone at the Department's discretion. ()

a. Electronically Filed Claims. Claimants may file claims electronically by accessing Idaho's Internet claim system or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant completes the application process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location is effective as of the Sunday of the week of the date shown on the date/time stamp. ()

b. Interstate Claims. Any claim filed by an interstate claimant is accepted in the same manner and conditions for which claims are accepted from intrastate claimants. ()

c. Telephone Claims. A claimant may also file a claim by calling the Central Claims Office. A claim filed via telephone is effective as of the Sunday of the week in which the claimant first calls the Central Claims Office to initiate the claim. ()

d. Claimants' Electronic Verification. A unique confidential number or other electronic method of verification approved by the Department may be used by a claimant or an employer to submit information or engage in transactions with the Department through electronic or telephonic means. Use of this method of verification has the same force and effect as a manual signature. ()

04. Registration/Reporting Requirements -- Interstate Claimants. Interstate claimants are required to comply with the same reporting requirements prescribed for regular Idaho intrastate claimants. Ref. Sec. 72-1366(1), (2), Idaho Code. ()

07. Requirement to Provide Information. If a claimant fails to provide the Department with all necessary information pertinent to eligibility, the claimant is denied benefits until the information is provided. Any individual making a claim for benefits must provide the Department with: ()

- a. The claimant's legal name; (3-15-02)
- b. The claimant's Social Security Number; (3-15-02)
- c. The address where the claimant's mail is delivered; (3-15-02)
- d. The claimant's place of last employment; (3-15-02)
- e. The name, correct mailing address, dates of employment, and the reason for separation from all of the claimant's most recent and base-period employers; ()
- f. If requested by the Department, a list of all other employment in the past twenty-four (24) months; (3-15-02)
- g. The claimant's plans for finding other employment at the earliest possible time; and (3-15-02)
- h. Other information necessary for the proper processing of the claim. (3-15-02)
- i. Once a claim has been established, the claimant must provide, upon request, a record of the claimant's work search, in order for the Department to assess compliance with personal eligibility requirements. ()
- j. If the claimant's identifying information does not match with data provided by the Social Security Administration, the Division of Motor Vehicles, or other public entities for identity verification purposes, the claimant will be provided notice and an opportunity to provide proof of identity before benefits are denied. ()

08. Separation Notice. (3-19-99)

a. Notice to Employer of Separation. Every employer (including employers not subject to Title 72, Chapter 13, Idaho Code), when contacted by a Department representative for a response, must respond to the Department with the reasons for the separation whenever the claimant: ()

- i. Left his employment voluntarily; (3-19-99)
- ii. Was discharged from his employment due to misconduct; (3-19-99)
- iii. Is unemployed due to a strike, lockout, or other labor dispute; (3-30-07)
- iv. Is not working due to a suspension; or (3-30-07)
- v. Was separated for any other reason except lack of available work. (3-19-99)

b. Employer Response. The employer's response must be given by the employer or on the employer's behalf by someone having personal knowledge of the facts concerning the separation. The employer should provide to the Department, via electronic media or mail, copies of any documentation supporting their position. (3-30-07)

09. Additional Claim or Reopened Claim. A claim must be reestablished after a claimant has failed to report or has reported excessive earnings for two (2) or more consecutive weeks. ()

10. Use of Wage Credits. All unemployment insurance wage credits from any source that are assignable to the state of Idaho will be used in establishing a claim and determining the claimant's monetary eligibility. Ref. Sec. 72-1367(1), Idaho Code. (3-19-99)

11. Valid Claim. To be a valid claim for benefits, a claim must be filed during a week of no work, a week of less than full-time work in which the total wages payable to the claimant for work performed in such week amount to less than one and one-half (1-1/2) times the claimant's weekly benefit amount, or a week in which the

claimant is separated from employment. Ref. Sec. 72-1327A and 72-1312, Idaho Code. (3-19-99)

426. -- 449. (RESERVED)

450. QUIT.
Ref. Sec. 72-1366(5), Idaho Code. (3-19-99)

01. Burden of Proof. The claimant has the burden of proof to establish that he voluntarily left his employment with good cause in connection with the employment to be eligible for benefits. (3-19-99)

02. Cause Connected with Employment. To be connected with employment, a claimant's reason(s) for leaving the employment must arise from the working conditions, job tasks, or employment agreement. If the claimant's reason(s) for leaving the employment arise from personal/non job-related matters, the reasons are not connected with the claimant's employment. (3-19-99)

03. Good Cause. The standard of what constitutes good cause is the standard of reasonableness as applied to the average man or woman. Whether good cause is present depends upon whether a reasonable person would consider the circumstances resulting in the claimant's unemployment to be real, substantial, and compelling. (3-19-99)

04. Moral or Ethical Quit. A claimant who leaves a job because of a reasonable and serious objection to the work requirements of the employer on moral or ethical grounds and is otherwise eligible, will not be denied benefits. (3-19-99)

05. Quit Due to Health or Physical Condition. A claimant whose unemployment is due to his health or physical condition which makes it impossible for him to continue to perform the duties of the job will be deemed to have quit work with good cause connected with employment. (3-19-99)

06. Quit for Permanent Work or Quit Part-Time Work for Increase in Work Hours. A claimant who quits a temporary job for a permanent job or who quits part-time employment for employment with an increase in the number of hours of work will be deemed to have quit work with good cause connected with employment. (3-19-99)

07. Quit or Retirement During Employer Downsizing. An individual who has continuing suitable work available and who voluntarily elects to retire or to terminate employment during a period of reorganization or downsizing will be deemed to have voluntarily quit the employment for personal reasons. ()

08. Unrelated Discharge Prior to Pending Resignation. The eligibility of a claimant discharged before a pending resignation has occurred for reasons unrelated to the pending resignation will be determined on the basis of the discharge. ()

09. When Notice of Resignation Prompts a Discharge. If a claimant had given notice of a pending resignation, but was discharged before the effective date of the resignation, both "separations" must be considered. The following three (3) elements should be present for both actions to affect the claimant's eligibility: (3-19-99)

a. The employee gave notice to the employer of a specific separation date; (3-19-99)

b. The employer's decision to discharge the claimant before the effective date of the resignation was a consequence of the pending separation; and (3-19-99)

c. The discharge occurred a short time prior to the effective date of the resignation. (3-19-99)

10. Quit Due to Harassment. Good cause for quitting employment may be established by showing the party was subjected to any form of harassment that is unlawful under the Idaho Human Rights Act, Title 67, Chapter 59, Idaho Code. ()

451. -- 459. (RESERVED)

460. PROFESSIONAL ATHLETES BETWEEN SEASONS.

Ref. Sec. 72-1366(18), Idaho Code.

(3-30-07)

01. Base Period Wages. No base period wages are used to establish a claim when substantially all services performed during the base period consist of participation in sports, athletic events, training, or preparing to so participate, for any week which commences during the period between two (2) successive sport seasons (or similar periods) if the individual performed such services in the first season (or similar period) and there is a reasonable assurance that the individual will perform such services in the later of such seasons (or similar periods). ()

02. Reasonable Assurance. Reasonable assurance requires the following: ()

a. The claimant has a contract, either written or oral; (3-30-07)

b. The claimant offered to work and the employer expressed an interest in hiring the player for the next season (or similar period); or (3-30-07)

c. The claimant expresses a readiness and willingness or intent to participate in the sport the following season. Reasonable assurance exists if the claimant asserts he or she intends to pursue employment as a professional athlete the next season despite not having a specific employer to return to or a formal offer of employment. (3-30-07)

03. Substantially All Services. An individual is deemed to have performed “substantially all services” in sports, athletic events, training, or preparing to so participate if ninety percent (90%) or more of the base period wages were based on such services. (3-30-07)

461. -- 474. (RESERVED)

475. REFUSAL OF WORK/FAILURE TO APPLY.

Ref. Sec. 72-1366(6), (7), Idaho Code.

(3-19-99)

01. Citizenship or Residency Requirements. An employer’s restrictions on citizenship or residency is deemed good cause for a claimant’s failure to apply for available work if he does not meet the requirements. (3-19-99)

02. Claimant Conduct. A claimant who, by his conduct, causes an employer to withdraw an offer of suitable work or terminate the offer after the claimant has accepted it is ineligible. (3-19-99)

03. Claimant Responsibility. A claimant has the responsibility to apply for and accept suitable work. (3-19-99)

04. Conscientious Objection. A claimant may refuse employment that requires him to work on his Sabbath if his religious convictions do not permit him to work on that day. (3-19-99)

05. Employer Requirements. Claimants are expected to comply with reasonable, lawful requirements that are typical of certain occupations, such as a requirement that a worker be bonded. Unreasonable requirements by employers will not be used as a basis to deny benefits. However, a claimant must have good cause to refuse or fail to meet an employer’s reasonable, lawful employment requirements to be eligible for benefits. (3-19-99)

06. Failure to Report. A claimant who fails to report to the Department when so directed, fails to follow explicit instructions for applying for suitable, available work, or fails to report to work after accepting employment, without good cause, is ineligible. Ref. Sec. 72-1366(2), (6), Idaho Code. ()

07. Failure to Return to Work After Layoff. A claimant who has been laid off, but fails to return to work on the date specified by the employer at the time of layoff or fails to respond to a callback after a layoff, will be considered to have refused an offer of work if the ongoing employment relationship is severed as a result. If the claimant declines work with the employer but the ongoing employment relationship is not severed as a result, the claimant’s availability for work will be examined, but the claimant will not be considered to have refused an offer of

work under Sections 72-1366(6) or (21)(a)(ii)(A), Idaho Code. ()

08. Government Requirements. A claimant who cannot meet government requirements within a reasonable period of time has good cause for refusing that opportunity to work. ()

09. Moral Objections. A claimant is not ineligible for failing to apply for or accept employment if the claimant has reasonable, serious objections to the work or the workplace on moral or ethical grounds. (3-19-99)

10. Offer of Work. A claimant whose unemployment is due to his failure without good cause to accept available, suitable work is ineligible. The job offer must have been genuine and known to the claimant. (3-19-99)

11. Part-Time Work. A claimant must be available for and willing to accept suitable part-time work in the absence of suitable full-time work. (3-19-99)

12. Personal Circumstances. To have good cause to refuse to apply for or accept available, suitable work because of personal circumstances, a claimant must show that his circumstances were so compelling that a reasonably prudent individual would have acted in the same manner under the same circumstances. (3-19-99)

13. Prospect of More Suitable Work. A claimant is not ineligible for failing to accept employment if he has excellent prospects for more suitable work with his former employer or in his regular occupation. (3-19-99)

14. Suitable Work. Every claimant has the right to restrict his availability to suitable work. (3-19-99)

15. Travel Distance. A claimant is not ineligible if the travel distance to available work is excessive or unreasonable. A claimant is ineligible if he fails to apply for and accept suitable work within a commuting area similar to other workers in his area and occupation. (3-19-99)

476. -- 499. (RESERVED)

500. REISSUING BENEFIT PAYMENTS.

Whenever a benefit payment is lost, stolen, destroyed, or forged, the claimant will be issued a new benefit payment upon his proper presentation of the facts and submission of an affidavit, in a form prescribed by the Department, for the issuance of a new benefit payment. Ref. Section 72-1368(1), Idaho Code. (7-1-10)

01. Affidavit for Issuance of New Benefit Payment. A claimant's affidavit filed for the issuance of a new benefit payment must be signed before a notary public or an authorized representative of the Department. (7-1-10)

02. Reissuance of Stolen Benefit Payments. If a claimant knows who took a benefit payment, he must provide evidence that he has taken all reasonably available legal steps and been unsuccessful in recovering the benefit payment before the Department will consider reissuing the benefit payment. (7-1-10)

501. -- 524. (RESERVED)

525. REPORTABLE INCOME.

Ref. Sections 72-1312, 72-1328, Idaho Code. (3-19-99)

01. Back Pay or Disputed Wages. Amounts received as a result of labor relations awards or judgments for back pay, or for disputed wages, constitute wages for the weeks in which the claimant would have earned them, or are assignable to the weeks stipulated in the award or judgment. ()

02. Disability/Injury Compensation. Injury or disability compensation payments are not considered wages and are not reportable income for unemployment insurance purposes. (3-19-99)

03. Disability Retirement Payments. Retirement payments as a result of disability are treated the same as other types of retirement payments. Ref. Section 72-1312(4), Idaho Code. (3-19-99)

04. Gratuities or Tips. Gratuities or tips must be reported by a claimant for the week in which each gratuity or tip is earned. (3-19-99)

05. Holiday Pay. Holiday pay must be reported as though earned in the week in which the holiday occurs. (4-6-05)

06. Non-Periodic Remuneration. All non-periodic remuneration such as one-time severance pay, profit sharing, and bonus pay is reportable for the week in which paid. (3-19-99)

07. Penalty or Damage Awards. Amounts awarded to a claimant as a penalty or damages against an employer, other than for lost wages, do not constitute wages. (3-19-99)

08. Pension, Retirement, or Annuity Payments. The pension deduction provision of Section 72-1312(4), Idaho Code, only applies if the pension, retirement pay, annuity, or other similar periodic payment is made under a plan maintained or contributed to by a base period employer. The dollar amount of the weekly pension will be deducted from the claimant's weekly benefit amount unless the claimant has made contributions toward the pension. If the claimant has made contributions toward the pension plan, no deduction for the pension will be made from the claimant's weekly benefit amount. Ref. Section 72-1312(4), Idaho Code. ()

a. Pension Contributions. The burden is on the claimant to establish by substantial, competent evidence that he has made contributions toward the pension, retirement pay, annuity or other similar payment plan. (3-19-99)

b. Pension Payment Changes. Any change in the amount of the pension, retirement, or annuity payments which affects the deduction from the claimant's weekly benefit amount will be applied in the first full week after the effective date of the change. (3-19-99)

09. Relief Work or Public Assistance. (3-19-99)

a. Remuneration received for relief work or public service work will be considered wages on the same basis as any other employment. (3-19-99)

b. Eligibility When Public Assistance Received. A person receiving public assistance is eligible for benefits if no work is involved and the claimant is otherwise eligible. (3-19-99)

10. Self-Employment Earnings. When reporting earnings, a claimant must report gross earnings from self-employment. If the claimant demonstrates to the Department that certain expenses were reasonable and necessary in order to accomplish the work, the Department may allow the deduction of those expenses from claimant's gross wages. Deductible expenses may include, but are not limited to, buying products wholesale for resale and renting equipment to accomplish a task. Non-deductible expenses include, but are not limited to, transportation costs, uniforms, and depreciation of equipment. ()

11. Severance Pay. An equal portion of a periodic severance payment must be reported in each week of the period covered by the payment. However, severance pay received in a lump sum payment at the time of severance of the employment relationship must be reported when paid. (3-19-99)

12. Vacation Pay. Vacation pay allocable to a certain period of time in accordance with an employment agreement must be reported in the week to which it is allocable. However, vacation pay received in a lump-sum payment at the time of severance of the employment relationship must be reported when paid. (3-19-99)

13. Verification of Earnings on Claim Reports. The Department may verify the earnings and/or reasons for separation reported by claimants on claim reports filed for benefit payments. Ref. Section 72-1368(1), Idaho Code. (3-19-99)

14. Wages for Contract Services. A person who is bound by a contract which does not prevent him from accepting other employment but who receives pay for a period of not working, is required to report the contract payments as earnings in equal portions in each week of the period covered by the contract. This rule does not apply to

employees of educational institutions. (3-19-99)

15. Wages for Services Performed Prior to Separation. Wages for services performed prior to a claimant's separation are reportable for the week in which earned. (3-19-99)

16. Temporary Disability Benefits. For any week with respect to which a claimant is receiving or has received temporary disability benefits under a worker's compensation law of any state or under a similar law of the United States, such payments must be reported in an amount attributable to such week. ()

526. -- 549. (RESERVED)

550. REPORTING REQUIREMENTS.

Each claimant must report weekly or biweekly for benefits as directed. When filing claim reports, a claimant must use the reporting method assigned by the Department. Failure to file timely reports in a manner required by this rule will result in ineligibility for benefits for the week(s) claimed. Ref. Section 72-1366(1), Idaho Code. (3-29-12)

01. Mailed Reports. Reports that are mailed are considered timely when the envelope containing the report is postmarked within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the report period will extend to the next working day. ()

02. Internet Reports. Reports filed via the Internet are considered timely when made between 12:00 a.m., mountain time zone, of the Sunday following the week being claimed and midnight 11:59 p.m., mountain time zone of the Saturday following the week being claimed. ()

03. Facsimile Reports. Reports filed by facsimile are considered timely when transmitted on a form provided by the Department to a telephone number designated by the Department to receive such documents within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period will extend to the next working day. Reports are deemed filed upon receipt by the Department. ()

04. Electronic Mail Reports. Reports filed by electronic mail are considered timely when electronically mailed in a format provided by the Department to an email address designated by the Department to receive such documents within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period will extend to the next working day. Reports are deemed filed upon receipt by the Department. ()

05. Telephone Reports. Reports filed by telephone are timely if the claimant contacts the Central Claims Office at a telephone number designated by the Department to provide such reports during regular business hours within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the report period will extend to the next working day. ()

06. When Report Missing. If a claimant establishes, by credible and corroborated evidence, that a missing report was properly filed as required by this rule, a replacement report will be considered timely. (3-29-12)

551. -- 574. (RESERVED)

575. SEEKING WORK.

Ref. Sec. 72-1366(4), (6), Idaho Code. (3-19-99)

01. Attitude and Behavior. A claimant's attitude and behavior must be conducive to a positive reaction by employers to his job search. (3-19-99)

02. Effort to Secure Employment. A claimant will be expected to do what is normally done by unemployed persons that are seeking work. (3-19-99)

03. Employer's Hiring Practices. An employer's reluctance to hire a claimant because of his appearance or physical condition is not a determining factor in ruling on the claimant's eligibility. (3-19-99)

04. Job Attachment Classifications. For the purpose of administering the work search requirements of Section 72-1366(4) and (6), Idaho Code, a claimant will be classified according to his attachment to an employer or industry, as follows: (3-19-99)

a. Code R-Recall, U-Union or X-Both. A claimant who has a firm attachment to an employer, industry or union, or who is temporarily or seasonally unemployed, and expects to return to his former job or employer in a reasonable length of time not to exceed a maximum of sixteen (16) weeks. If during the sixteen (16) weeks the claimant returns to work temporarily for the job attached employer, the claimant's period of job attachment will be extended by one (1) week for each week of verified full-time employment as defined by Section 72-1312, Idaho Code. (3-25-16)

b. Code B. A claimant who possesses marketable skills in an occupation, but has no immediate prospects for reemployment, and whose employment expectations (i.e., wages, hours, etc.) are realistic in relation to the normal labor market supply and demand in his area of availability. (3-19-99)

c. Code D. A claimant who is assigned to a training course under the provisions of Section 72-1366(8), Idaho Code. (3-19-99)

05. Jobs Availability. A claimant will not be required to make useless employer contacts if there are no jobs available in the area due to seasonal factors. (3-19-99)

06. License or Permits. A claimant must provide or be capable of obtaining a license or permit if required by law for performance of the work. ()

07. No Employment Prospects. A claimant must apply for and accept a lower or beginning pay rate for employment if he has no prospects for a better paying job in the locality. (3-19-99)

08. Seasonal Availability. A claimant who is regularly employed on a seasonal basis must be available for other types of work in the off-season to be eligible for benefits. (3-19-99)

09. Work-Seeking Requirement Categories. A claimant must seek work in accordance with the following categories of work-seeking activity, as instructed by a Department representative or as notified by the Department via electronic claims messaging. A claimant must meet the requirements of the code to which the claimant is assigned. A claimant's category of work-seeking activity will be determined and modified based on the claimant's prevailing local labor market conditions and/or the average county unemployment rates. Failure to comply with work-seeking requirements will result in a denial of benefits. ()

a. Code O claimant must maintain regular contact with his employer(s) or union. (3-29-17)

b. Code 1 claimant must engage in one (1) or more of the following activities to increase his prospects of securing employment: (3-15-02)

i. Make at least one (1) employer contact each week in the manner prescribed by the Central Claims Office; (3-28-18)

ii. Attend a Job Search Workshop; (3-15-02)

iii. Expand work search efforts to surrounding areas or states; (3-15-02)

iv. Send resumes to firms/businesses that hire people with his skills; (3-15-02)

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (4-11-06)

c. Code 2 claimant must engage in one (1) or more of the following activities to increase his prospects of securing employment: (3-15-02)

i. Make at least two (2) employer contacts per week in the manner prescribed by the Central Claims Office; (3-28-18)

ii. Attend a Job Search Workshop; (3-15-02)

iii. Expand work search efforts to surrounding areas or states; (3-15-02)

iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (4-11-06)

d. Code 3 claimant must engage in one (1) or more of the following activities to increase his prospects of securing employment: (3-15-02)

i. Make at least three (3) employer contacts per week in the manner prescribed by the Central Claims Office; (3-28-18)

ii. Attend a Job Search Workshop; (3-15-02)

iii. Expand work search efforts to surrounding areas or states; (3-15-02)

iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (4-11-06)

576. -- 599. (RESERVED)

600. SELF-EMPLOYMENT.

A claimant is ineligible when his self-employment is of such size and nature that the operation of it is his principal duty and working for an employer is merely incidental. Ref. Sec. 72-1366(13), Idaho Code. (3-19-99)

01. Occupational Conflicts. Agricultural activities, commercial enterprises, family enterprises, and commission sales work are examples of self-employment which may render a claimant ineligible unless he can show he is seeking employment and is available for suitable work. (3-19-99)

02. Potential Employability. A claimant is eligible if his self-employment in no way interferes with his potential employability and work schedule. (3-19-99)

601. -- 649. (RESERVED)

650. SIGNATURES OF ILLITERATES AND WITNESSES.

If a claimant is unable to write his name, he must instead use the mark (X). The mark must be witnessed by a Department representative or an individual who must enter, immediately after the mark (X), the words "His Mark." Next, the name of the claimant must be printed, followed by the signature of the Department representative or the individual who witnessed the mark. Ref. Sec. 72-1366 (1), Idaho Code. (3-19-99)

651. -- 674. (RESERVED)

675. TOTAL TEMPORARY DISABILITY ALTERNATE BASE PERIOD (TTD).

The alternate base period provision of Section 72-1306(2), Idaho Code, will apply only if the claimant cannot establish monetary eligibility by using the regular base period described in of Section 72-1306(1), Idaho Code.

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676. -- 699. (RESERVED)

700. PARTIAL PAYMENTS OF AMOUNTS OWED THE DEPARTMENT.

Upon the Department's receipt of a partial payment of an overpayment and accrued interest and penalties thereon, the Department must, unless other arrangements have been made with the debtor and approved by the Department, apply the partial payment to the amounts owed as follows:

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01. Interest. The partial payment must be applied first to any accrued interest of the amounts due, starting with the oldest accrued interest;

()

02. Penalties. After any accrued interest has been paid in full, the partial payment must be applied next to any assessed penalties, starting with the oldest assessed penalty;

()

03. Fraud Overpayments. After all accrued interest and assessed penalties have been paid in full, the partial payment must be applied next to any fraud overpayments due, starting with the oldest fraud overpayment; and

()

04. Nonfraud Overpayments. After all fraud overpayments have been paid in full, the partial payment must be applied next to any nonfraud overpayments, starting with the oldest nonfraud overpayment. Ref. Sec. 72-1369, Idaho Code.

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701. -- 724. (RESERVED)

725. RECOVERIES.

Unless the overpayment resulted from a determination that the claimant willfully made a false statement or willfully failed to report a material fact, overpayments will be deducted from any future benefits payable. Ref. Secs. 72-1369 and 72-1366, Idaho Code.

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726. -- 749. (RESERVED)

750. WAIVER OF REPAYMENT.

An interested party must submit a written request for a waiver of repayment within fourteen (14) days of the date of mailing of the Determination of Overpayment. Ref. Sec. 72-1369

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751. -- 999. (RESERVED)

09.01.35 – UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES

000. LEGAL AUTHORITY.

These rules are promulgated under Section 72-1333, Idaho Code. ()

001. TITLE AND SCOPE.

01. **Title.** IDAPA 09.01.35, “Unemployment Insurance Tax Administration Rules.” ()

02. **Scope.** These rules govern Department procedures and the rights and duties of employers under the Unemployment Insurance Program. (3-19-99)

002. ADMINISTRATIVE APPEALS.

Administrative appeals from determinations under this chapter may be taken as provided in IDAPA 09.01.01, “Rules of Administrative Procedure of the Department of Labor,” and Sections 72-1361 and 72-1368, Idaho Code. ()

003. -- 010. (RESERVED)

011. GENERAL PROVISIONS.

01. **Quarterly Reporting.** Subject employers shall report all wages paid for services in covered employment each calendar quarter. In the event a subject employer does not pay wages during a calendar quarter, the employer shall file a quarterly report indicating that no wages were paid. Ref. Section 72-1337, Idaho Code. (3-22-07)

02. **Contribution Due Date.** If the normal due date falls on a weekend or holiday the next workday is the due date for contributions. Ref. Section 72-1349, Idaho Code. ()

03. **Penalties and Interest on Bankruptcy.** Penalty and/or interest shall not be assessed on amounts covered in the Department’s Proof of Claim with the Bankruptcy Court for the period after the filing date of the Bankruptcy Petition and ending with the conclusion of bankruptcy proceedings and distribution of assets. Post petition penalty and interest shall be compromised, provided the amount due is paid in full by a date established after the termination of the bankruptcy proceedings. Ref. Section 72-1356, Idaho Code. (3-19-99)

04. **Lien Interest.** Lien interest on a delinquent account shall be assessed against the remaining unpaid balance computed from the day following the recording of a tax lien. Ref. Section 72-1360, Idaho Code. (3-19-99)

05. **Penalty and Interest During Controversy.** Penalty and/or interest shall be compromised for periods when a valid controversy exists if amounts determined to be due are paid in full by a date established at the conclusion of the issue. Ref. Sections 72-1354 and 72-1360, Idaho Code. (3-19-99)

06. **Determinations and Appeals.** The rules governing the form, filing, and other procedures relating to determinations under this chapter, and any appeal from those determinations, are provided in IDAPA 09.01.01, “Rules of Administrative Procedure of the Department of Labor.” ()

07. **When Reports Replace Determinations.** In cases where a determination of amounts due is made by the Department pursuant to Section 72-1358, Idaho Code, the reports shall replace the determination and will be used to establish the employer’s liability if: ()

a. The employer files reports for the periods covered by the determination before the determination becomes final; and (3-30-01)

b. The Department determines that the reports are accurate and complete. If the Department determines the reports are not accurate or complete, the reports shall be treated as an appeal of the determination. (3-30-01)

08. **Determination of Payment Date.** Each amount shall be deemed to have been paid on the date that the Department receives payment thereof in cash or by check or other order for the payment of money honored by the drawer on presentment; provided, that if sent through the mail, it shall be deemed to have been paid as of the date mailed as determined by the postmark on the envelope containing same, or the date of the check in lieu of a postmark. Provided further, that in the case of payments received by means of garnishment, execution, or levy, the amount received shall be deemed to have been paid as of the date that the order of garnishment, execution, or levy is served.

Ref. Section 72-1349, Idaho Code.

(3-19-99)

09. Release of Lien upon Payment in Full. An amount secured by a lien shall be deemed to be satisfied when payment in full is received by the Department in the form of cash, money order, or other certified funds, or proof presented that a check or other negotiable instrument has been honored by its drawer upon presentment. Ref. Section 45-1908, Idaho Code. (3-19-99)

10. Contribution Reports. Each contribution shall be accompanied by an employer's contribution report. All contribution reports shall be filed electronically with the department unless the employer has petitioned the department in writing for a waiver and the department has granted a waiver allowing the filing of a non-electronic contribution report. All contribution reports shall be in a form or medium prescribed and furnished or approved for such purpose by the department, giving such information as may be required, including number of individuals employed and wages paid or payable to each, which must be signed, furnished, or acknowledged by the covered employer or, on their behalf by someone having personal knowledge of the facts therein stated, and who has been authorized by the covered employer to submit the information. Ref. Section 72-1349, Idaho Code. (3-20-14)

a. Common paymaster arrangements as referenced by Internal Revenue Code Section 3306 are prohibited for Idaho unemployment insurance purposes. Each covered employer shall complete and submit an Idaho business registration form and the Department will assign to the covered employer a unique unemployment insurance account number. The covered employer must file quarterly reports under its assigned unemployment insurance account number. The workers of one (1) covered employer may not be reported using the assigned unemployment insurance account number of a different covered employer or related entity. Ref. Sections 72-1325 and 72-1315, Idaho Code. (3-22-07)

012. -- 039. (RESERVED)

040. COMPROMISE OF PENALTY AND CIVIL PENALTY.

Pursuant to Section 72-1354, Idaho Code, the Director or his authorized representative may, for good cause shown, compromise the amount of penalties owed on an employer account. An employer shall submit a request in writing for compromise of penalties, setting forth the reason(s) for the delinquency, and attaching any available evidence supporting the request. (4-11-06)

01. Good Cause. An employer has established good cause if the employer can show that one (1) of the following criteria has been met: ()

a. The reason for the delinquency was beyond the reasonable control of the employer. Examples of circumstances that are beyond the reasonable control of the employer include, but are not limited to, the following: (3-19-99)

i. Departmental error, including but not limited to providing incorrect information to the employer or not furnishing proper forms in sufficient time to permit timely payment of contributions; (3-19-99)

ii. Death or serious illness or injury of the employer or the employer's accountant or members of their immediate families; (3-19-99)

iii. Destruction by fire or other casualty of the employer's place of business or business records; or (3-19-99)

iv. Postal service delays. (3-19-99)

b. The delinquency was due to circumstances for which the imposition of penalties would be inequitable. (3-19-99)

c. Good cause is also established in the case of an employer who has never received a status determination, who has never paid any contributions to the director, who voluntarily approaches the Department to inquire as to whether workers are engaged in covered employment, and the failure to pay contributions was due to the employer's good faith belief that the employer was not a covered employer pursuant to the provisions of Idaho

Employment Security Law. Ref. Section 72-1354, Idaho Code.

(7-1-05)

041. -- 050. (RESERVED)

051. ROUNDING WAGES REPORTED ON CONTRIBUTION REPORT TO NEXT LOWER DOLLAR AMOUNT.

The total wages and taxable wages shown on the contribution report which are to be used in computing contributions due shall be reduced to the next lower dollar amount. Ref. Section 72-1349, Idaho Code.

(3-19-99)

052. -- 055. (RESERVED)

056. APPLICATION OF PAYMENTS ON DELINQUENT ACCOUNTS.

Unless otherwise specified and approved by the Department, apply payment as follows:

()

01. First Application. First, credit such payment in satisfaction of interest due for the calendar quarter or period most delinquent in point of time;

(3-19-99)

02. Second Application. Next, credit the remainder of such payment in satisfaction of penalty due for such calendar quarter or period most delinquent in point of time;

(3-19-99)

03. Third Application. Next, credit the remainder of such payment in satisfaction of contributions due for the calendar quarter or period most delinquent in point of time;

(3-19-99)

04. Subsequent Applications. Such applications shall be applied in a like manner for each remaining delinquent quarter. Any remaining credit shall be applied to interest on civil penalties then to civil penalty due until the amount of payment is exhausted. Ref. Section 72-1354, Idaho Code.

(4-11-06)

057. -- 060. (RESERVED)

061. DEFINITIONS.

The definitions listed in IDAPA 09.01.35, "Unemployment Insurance Tax Administration Rules," Section 011, and the following are applicable to the UI Compliance Bureau.

(3-22-07)

01. Tolerance Amount. A tolerance of four dollars and ninety-nine cents (\$4.99) is established in connection with collection of amounts due; and under normal circumstances, no delinquency or credit will be issued or carried on the books of accounts for this amount or less. Ref. Section 72-1349, Idaho Code.

(3-19-99)

02. Wages. The term "wages" includes all remuneration from whatever source, paid or given in exchange for services performed or to be performed, including the cash value of remuneration in any medium other than cash. "Wages" in covered employment, and subject to unemployment insurance reporting, include, but are not limited to:

(3-19-99)

a. Commissions, bonuses, draws, distributions, dividends and any other forms or types of payments made by corporations or other similar entities if paid in exchange for services;

(4-5-00)

b. Bonuses, prizes, and gifts given to an employee in recognition of services, sales, or production;

(3-19-99)

c. Commissions for past services in covered employment;

(3-19-99)

d. Remuneration paid to corporate officers which is paid in exchange for services performed or to be performed for or on behalf of the corporation;

(4-5-00)

e. Salary advances against commissions;

(3-19-99)

f. All forms of profit sharing for services rendered unless specifically exempt under Section 72-1328, Idaho Code;

(3-19-99)

g. Excess travel or employer business allowances over actual expense, or over the federal allowance per diem rate for the area of travel, unless returned to the employer; (3-19-99)

h. Vacation or “idle-time” pay, no matter when paid; (3-19-99)

i. Personal expense reimbursement, not gifts, i.e., clothing, family expenses, rent. (3-19-99)

j. The director or his authorized representative shall determine the fair market value of any other remuneration, regardless of its classification, form, or label, which is paid to a worker in exchange for services. In making such determination, consideration will be given to the prevailing wage for similar services. Ref. Section 72-1328, Idaho Code. (3-19-99)

03. Exclusions From Wages. The term “wages” described in Section 72-1328, Idaho Code, does not include the following: (3-19-99)

a. Prizes or gifts for special occasions which are expressions of good will; (3-19-99)

b. Bonuses paid for signing a contract; (3-19-99)

c. Fees paid to participate periodically in meetings of boards of directors unless exceedingly high; i.e., amounts comparable to other employers in the same industry, of relatively the same size; (3-19-99)

d. Drawings or advances by partners of a partnership, or by members of a limited liability company treated for federal tax purposes as a partnership or sole proprietorship; (4-5-00)

e. Rental charge for personal equipment provided by the employee on the job: if (3-19-99)

i. There is a rental agreement; and (3-19-99)

ii. The worker has received a reasonable wage for services performed; and (3-19-99)

iii. The fees are held separately on the employer’s records. (3-19-99)

f. Stock or membership interests issued for purposes other than services performed or to be performed; (3-19-99)

g. Reimbursement for actual employee expense, or business allowance arrangements with employees that requires them: (3-19-99)

i. To have paid or incurred reasonable job related expenses while performing services as employees; and (3-19-99)

ii. To account adequately to the employer for these expenses; and (3-19-99)

iii. To return any excess reimbursement or allowance. (3-19-99)

h. Payments for employee travel expenses, provided: (3-19-99)

i. Payments are job related expenses while performing services; and (3-19-99)

ii. Payments do not exceed actual expenses or the federal allowance per diem rate for the area of travel; and (3-19-99)

iii. Records for days of travel pertaining to per diem payments are verifiable. (3-19-99)

i. Employee fringe benefits as set forth in Section 132 of the Internal Revenue Code, which are

excluded from an employee's gross income and which are not subject to federal unemployment taxes. (3-19-99)

j. Noncash payment to farmworkers. Noncash payments for farm work will be excluded from wages if they are "de minimis" in relation to the amount of cash wages paid to the farmworkers, or are not intended to be treated as the cash equivalent of wages, or as the cash payment of wages. Ref. Section 72-1328, Idaho Code. (3-15-02)

k. Payments of any kind by a partnership to its partner or by a sole proprietorship to its owner. (3-29-17)

04. Treatment of Limited Liability Companies. For purposes of state unemployment tax coverage, a limited liability company will have the same status as it may have elected for federal tax purposes, or as that status may be determined or required by the federal government, subject to the provisions of Subsections 061.02 and 061.03. Any member of a limited liability company that has elected to be treated as a corporation for federal tax purposes shall be treated as a corporate officer for state Employment Security Law purposes. (4-4-13)

05. Domestic Employment. Domestic employment is defined as work performed in the operation or maintenance of a private home, local college club, or local chapter of a college fraternity or sorority, as distinguished from services as an employee in pursuit of an employer's trade, occupation, profession, enterprise, or vocation. In general, domestic employment "in the operation or maintenance of a private home, local college club, or local chapter of a college fraternity or sorority" includes, but is not limited to, services rendered by cooks, waiters, butlers, maids, janitors, handymen, gardeners, housekeepers, housemothers, and in-home caregivers. Ref. Section 72-1315, Idaho Code. (3-15-02)

06. Casual Labor. Casual labor is labor that meets the requirements of Section 72-1316A(19), Idaho Code. The term, "services not in the course of the employer's trade or business," refers to services that do not promote or advance the trade or business of the employer. ()

07. Willfully. When applied to the intent with which an act is done or omitted, willfully implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, in the sense of having an evil or corrupt motive or intent. It is more nearly synonymous with "intentionally," "designedly," "without lawful excuse," and therefore not accidental. Ref. Section 72-1372 and 72-1351A, Idaho Code. (3-22-07)

062. SUBSTANCE VS. FORM.

In recognizing covered employers, covered employment and in classifying wages, the Department shall examine both the substance and the form of the arrangement, contract, transaction or event, but more consideration shall be given to the substance of the arrangement, contract, transaction or event than to the form. If it is determined that true economic substance is lacking or the operations, accounting practices and records do not reflect the purported form or legal status, the Department shall, regardless of the form, determine proper coverage or classification. (3-15-02)

063. -- 080. (RESERVED)

081. EMPLOYER RECORDS.

Each person hiring one (1) or more individuals, whether or not such employment is sufficient to create the status of a covered employer, shall maintain records for five (5) years to show the information hereinafter indicated. Ref. Section 72- 1337, Idaho Code. ()

01. Required Information. Such records shall show with respect to each employee unless the Department has ruled that the services do not constitute covered employment: (4-11-06)

- a.** Full name and home address of worker; (3-19-99)
- b.** Social Security account number; (3-19-99)
- c.** The place of work within this State; (4-11-06)

- d. Date on which employee was hired, rehired, or returned to work after temporary or partial layoff; (3-19-99)
- e. Date employment was terminated; whether the termination occurred by voluntary action of the individual and the reason given, or by discharge or death, and the reason for discharge; (3-19-99)
- f. Wages paid for employment in each pay period and total wages for all pay periods ending in each quarter of the year, showing separately: money wages; the cash value of other remuneration; and the amount of all bonuses or commissions. (3-19-99)

02. Travel or Employee Business Expenses. Amounts paid to employees as allowances or reimbursement for travel and employee business expenses and the amounts of such expenditures actually incurred and accounted for by them. (3-19-99)

03. Records to Be Made Available. The records to be made available to the director or his authorized representative, in accordance with the provisions of Section 72-1337, Idaho Code, shall include all of the business records, such as journals, ledgers, time books, minute books, or any other records or information which would tend to establish the existence of and/or amounts paid for services performed, whether or not in covered employment, and for information necessary to assist in or enable collection efforts or any other investigations conducted by the Department. (4-11-06)

082. -- 095. (RESERVED)

096. EMPLOYER STATUS REPORT.

01. Status Report. Each employer shall report on such form or any online system as may be prescribed and furnished, such information as may be necessary to make an initial or subsequent determination of status under the Idaho Code. Said reports shall be signed by the employer, or on behalf of the employer by a duly authorized representative for such purpose. Ref. Section 72-1337, Idaho Code. (4-11-06)

02. Exceptions. The provisions of this Rule do not apply to any employer for whom the services performed do not, by virtue of the provisions of Section 72-1316, Idaho Code, constitute covered employment, except that the director reserves the right, in his discretion, to require any such employer at any time to make the reports mentioned in Section 096 of this rule. Ref. Section 72-1337, Idaho Code. (3-19-99)

097. -- 105. (RESERVED)

106. CLAIMS OF EXEMPTION.

Any employer claiming that services performed for the employer or remuneration paid by the employer does not constitute covered employment or covered wages, as defined in Section 72-1316 and 72-1328, Idaho Code, shall make a report to the Department of Labor of all pertinent facts upon which said claim is based, which report needs to be signed by the person making the claim, if he is the employer, or on behalf of the employer by an authorized representative. Ref. Section 72- 1337, Idaho Code. (4-11-06)

107. REMUNERATION PAID CONSTITUTES BOTH TAXABLE WAGES AND EXCLUDED AMOUNTS.

When remuneration paid includes payment for other than wages for services performed in covered employment, the employer's records must account for wages and other remuneration separately. When this distribution is not shown on the records, the employee's entire remuneration will be deemed to be wages. Ref. Section 72-1337, Idaho Code. (3-19-99)

108. ELECTION TO EXEMPT CORPORATE OFFICERS.

A corporation may elect to exempt one (1) or more corporate officers from coverage by registering with the Department each qualifying corporate officer it elects to exempt pursuant to Section 72-1352A, Idaho Code. Registrations in the format prescribed by the Department made on or before December 15th shall become effective on the first day of the next calendar year and remain effective for at least two (2) consecutive calendar years. Exemptions are not retroactive and no refund or credit shall be given for contributions paid before the effective date of the

exemption. Exemptions continue to remain in effect after two (2) consecutive calendar years unless the exemption is terminated according to Subsection 108.04 of this rule or coverage is reinstated according to Subsection 108.05 of this rule. (3-29-12)

01. Public Company Election. A public company, as defined in Section 72-1352A, Idaho Code, may elect to exempt any bona-fide corporate officer who: (3-29-12)

a. Is voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation; (3-29-12)

b. Is a shareholder of the corporation; (3-29-12)

c. Exercises control in the daily management of the corporation; and (3-29-12)

d. Does not perform manual labor as a primary work responsibility. (3-29-12)

02. Election for Corporations That Are Not Public Companies. A corporation that is not a public company as defined in Section 72-1352A, Idaho Code, may exempt from coverage any bona-fide corporate officer who: (3-29-12)

a. Is a shareholder of the corporation; (3-29-12)

b. Voluntarily agrees to be exempted from coverage; and (3-29-12)

c. Exercises substantial control in the daily management of the corporation. (3-29-12)

03. Election to Exempt Not Applicable. The election to exempt does not apply to corporate officers covered by Sections 72-1316A, 72-1322D and 72-1349C, Idaho Code. (3-29-12)

04. Termination of Exemption. A corporate officer's exemption terminates upon the corporate officer's failure to satisfy the election criteria of Section 72-1352A, Idaho Code. It is the responsibility of the corporation to notify the Department in writing in a format required by the Department when an exempt corporate officer no longer meets the election criteria. A corporation is responsible for any taxes, penalties, and interest due after the date the exemption is terminated or should have been terminated. (3-29-12)

05. Reinstatement of Coverage. A corporation may elect to reinstate coverage for one (1) or more corporate officers previously exempted. Reinstatement requires written notice from the corporation to the Department in a format required by the Department. Reinstatement requests received by the Department on or before December 15th become effective the first day of the calendar year following the end of the exemption's initial two (2) year effective date. Coverage shall not be reinstated retroactively. (3-29-12)

06. Definitions. For purposes of this chapter: (3-29-12)

a. "Bona-fide corporate officer" is defined as any individual empowered in good faith by stockholders or directors, in accordance with the corporation's articles of incorporation or bylaws, to discharge the duties of a corporate officer. (3-29-12)

b. "Exercise substantial control in the daily management of the corporation" is defined as when an individual makes managerial decisions over a business function or functions that have some effect on the entire corporation. This includes the authority to hire and fire, to direct other's activities in the corporation, or the responsibility to account for and pay over taxes or debts incurred by the corporation. (3-29-12)

07. Services in Employment. Unless specifically exempted, services performed by corporate officers are considered services in employment and are covered for purposes of unemployment insurance. (3-29-12)

109. -- 110. (RESERVED)

111. SERVICES PERFORMED PART IN COVERED EMPLOYMENT AND PART IN EXCLUDED EMPLOYMENT.

When wages paid cover services performed both in covered employment and excluded employment, the employer's records must show the hours and wages for covered employment and also hours and wages for excluded employment. When this distribution is not shown on the records, the employee's entire wage will be deemed to have been earned in covered employment. Ref. Section 72-1337, Idaho Code. (3-19-99)

112. DETERMINING STATUS OF WORKER.

01. Determining if Worker Is an Employee. In making a determination as to whether a worker is performing services in covered employment, it shall be determined whether the worker is an employee. To determine whether a worker is an employee, the following factors may be considered: (3-22-07)

- a.** The way in which the business entity represented its relationship with the worker prior to the investigation or litigation, including representations to the Internal Revenue Service; (3-19-99)
- b.** Statements made to the Department; (3-19-99)
- c.** Method of payment to the worker, in particular whether federal, state, and FICA taxes are withheld from paychecks; and (3-19-99)
- d.** Whether life, health, or other benefits are provided to the worker at the business entity's expense. (3-19-99)

02. Determining if Worker Is an Independent Contractor. If it cannot be determined that a worker is an employee pursuant to Subsection 112.01 above, then a determination shall be made whether the worker is an "independent contractor" pursuant to the terms of Section 72-1316(4), Idaho Code. For the purposes of that section and these rules, an independent contractor is a worker who meets the requirements of both Sections 72-1316(4)(a) and (b), Idaho Code. (3-19-99)

03. Proving Worker Is Free from Control or Direction in His Work. To meet the requirement of Section 72-1316(4)(a), Idaho Code, the alleged employer must prove that a worker has been and will continue to be free from control or direction in the performance of his work, both under his contract of service and in fact. The following factors may be considered in this determination: (3-22-07)

- a.** Whether the alleged employer has control over the details of the work, the manner, method or mode of doing the work, and the means by which the work is to be accomplished, but without reference to having control over the results of the work. (3-19-99)
- b.** The freedom from direction and control must exist in theory (under a contract of service) and in fact; and (4-11-06)
- c.** The employer must demonstrate that it lacked a right to control the worker. (4-11-06)

04. Proving Worker Is Engaged in Independently Established Business. To meet the requirement of Section 72-1316(4)(b), Idaho Code, it must be proven that a worker is engaged in an independently established trade, occupation, profession or business. The following factors are significant and shall be considered in making this determination, although no single factor is regarded as controlling: (3-20-14)

- a.** The level of skill required to perform the work; (3-20-14)
 - i.** A worker who performs routine tasks requiring little or no training is indicative of the worker's status as an employee. (3-20-14)
 - ii.** A worker who performs work requiring skills marketable as a trade, occupation, profession or business, such as an electrician, attorney, physician, or CPA, is indicative of the worker's status as an independent contractor. (3-20-14)

iii. A worker who performs work requiring special licensing or compliance with regulatory requirements is indicative of the worker's status as an independent contractor. (3-20-14)

iv. A worker who receives all or substantially all of the worker's job training from the alleged employer is indicative of the worker's status as an employee. (3-20-14)

b. The extent to which the worker's services are an integral part of the alleged employer's business; (3-20-14)

i. A worker who performs the primary type of work that the alleged employer is in business to provide to its customers or clients is indicative of the worker's status as an employee. For example, an automotive repair business hires an additional mechanic to help in its service repair shop. Since the work provided by the worker is the primary type of work the automotive repair business provides to its customers, the work is indicative of the worker's status as an employee. (3-20-14)

ii. A worker who performs a specific job that is secondary to an integral part of the employer's business is indicative of the worker's status as an independent contractor. For example, if a manufacturing business requiring routine electrical work within its manufacturing facility hires an independent electrical company to provide that service, the electrical work performed is indicative of the worker's status as an independent contractor. (3-20-14)

iii. A worker who supervises the alleged employer's employees is indicative of the worker's status as an employee. (3-20-14)

iv. If the success of a business depends to an appreciable degree upon the performance of certain services, the worker performing those services is indicative of that worker's status as an employee. (3-20-14)

v. If a worker is not required to work solely for the alleged employer and there is a separate contractual relationship for each job that ends upon the completion of that job, the work is indicative of the worker's status as an independent contractor. (3-20-14)

c. The permanency of the relationship; (3-20-14)

i. The longer a worker works solely for a single alleged employer, the more indicative it is of the worker's status as an employee. (3-20-14)

ii. A worker who makes the worker's services available to the general public for hire on a regular and consistent basis is indicative of the worker's status as an independent contractor. (3-20-14)

iii. A worker whose hours worked are regularly scheduled, rather than sporadic or occasional, is indicative of the worker's status as an employee. (3-20-14)

iv. Work with a specific ending date that ends the working relationship between the worker and the alleged employer is indicative of the worker's status as an independent contractor. (3-20-14)

v. Work that is open ended allowing the worker to continue working for the same alleged employer as long as performance standards are met, is indicative of the worker's status as an employee. (3-20-14)

d. A worker's investment in facilities and equipment; (3-20-14)

i. A worker who is reimbursed for work-related purchases, materials or supplies, or is furnished work-related materials or supplies by the alleged employer is indicative of the worker's status as an employee. (3-20-14)

ii. A worker who uses the tools and equipment of the alleged employer is indicative of the worker's status as an employee. (3-20-14)

iii. A worker's significant investment in tools and equipment compared to the cost of the tools and equipment provided by the alleged employer is indicative of the worker's status as an independent contractor. (3-20-14)

iv. A worker who is financially responsible to the alleged employer for damage to equipment or tools is indicative of the worker's status as an independent contractor. (3-20-14)

v. A worker's investment in physical facilities used by the worker in performing services is indicative of the worker's status as an independent contractor. (3-20-14)

vi. A worker's lack of investment in physical facilities indicating a dependence on the alleged employer for whom the worker's services are performed is indicative of the worker's status as an employee. (3-20-14)

e. Whether a worker is customarily engaged in an outside trade, occupation, profession, or business providing the same type of services the worker provides for the alleged employer engaging his services; (3-20-14)

i. A worker who provides one (1) type of service for an alleged employer, while providing the same type of service to others for hire, is indicative of the worker's status as an independent contractor. (3-20-14)

ii. A worker who provides one (1) type of service for an alleged employer, while providing a different type of service to others for hire, is indicative of the worker's status as an employee of the alleged employer. (3-20-14)

iii. A worker who advertises independently via yellow pages, business cards, web pages, or other types of media is indicative of the worker's status as an independent contractor. (3-20-14)

f. A worker's opportunities for profit and loss; (3-20-14)

i. A worker required to carry business related expenses such as insurance, bonding, or workers compensation coverage is indicative of the worker's status as an independent contractor. (3-20-14)

ii. A worker's ability to earn a profit by performing work more efficiently or suffer a loss because of the work performed is indicative of the worker's status as an independent contractor. (3-20-14)

iii. A worker who is subject to a risk of economic loss due to significant investments or a bona fide liability for expenses is indicative of the worker's status as an independent contractor. (3-20-14)

g. Other factors when viewed fairly in light of all the circumstances that may or may not indicate that the worker was engaged in an independently established trade occupation, profession, or business. These factors may include control of the premises, right to determine hours, or who sets the rate of pay. (3-20-14)

05. Meeting Criteria for Covered Employment. A worker who meets one (1), but not both, of the tests in Subsections 112.03 and 112.04 above shall be found to perform services in covered employment. (3-19-99)

06. Evidence of Contractual Liability for Termination. For purposes of making a determination under Section 72-1316(4), Idaho Code, and this regulation, the party alleging that summary termination by either party would result in contractual liability must present some evidence upon which to base such allegation. Ref. Section 72-1316(4), Idaho Code. (3-19-99)

113. -- 130. (RESERVED)

131. FARM COMMODITY OWNERSHIP.

In determining if the farm operator-processor produced more than fifty percent (50%) of the commodities being processed, the following apply: (3-19-99)

01. Quantity. It will be determined on a quantity basis where the farm operator processes only one (1)

commodity.

(3-19-99)

02. Wages. It will be determined on the basis of the relationship between wages paid for processing commodities raised by the farm operator-processor and total wages paid for processing where the farm operator processes several commodities. Wages paid for processing each commodity will be determined. The proportionate share of such wages paid for processing that portion of the commodity raised by the farm operator-processor will be ascertained on the basis of the percentage of such commodity which was produced by the farm operator. This will be done for each commodity processed so as to ascertain total wages paid for processing commodities produced by the farm operator-processor. If such total is more than fifty percent (50%) of the total wages paid for processing all commodities, the activity will be exempt but if it is fifty percent (50%) or less, it will not be exempt. Ref. Section 72-1304, Idaho Code.

(3-19-99)

132. STATUS.

01. Status Information Required. To determine the taxable status of an employer, detailed information regarding the business activities of any person engaged in business in Idaho shall be submitted as required, including articles of incorporation, articles of organization, minutes of boards of directors, financial reports, partnership agreements, number of employees, wages paid, employment contracts, income tax records, and any other records or other information which may tend to establish such person's status. Ref. Section 72-1337, Idaho Code.

(3-19-99)

02. Notification to Liable Employers. An employer shall be notified in writing of any determination as to its liability for contributions, or its status as a covered employer if a formal determination was made after the employer questioned its status. The determination shall be in the form required by IDAPA 09.01.01.27.01, and shall become final if no timely appeal is taken to an appeals examiner pursuant to the Rules of Administrative Procedure of the Department of Labor.

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03. Employer Quarterly Report Forms. Employers who are liable to pay tax contributions, or who have elected a cost reimbursement option in lieu of tax contributions, shall submit quarterly report forms in any form or medium designated by the director or his authorized representative. Ref. Section 72-1349, Idaho Code.

(4-11-06)

04. Update Requirements. Covered employers shall furnish the Department with pertinent status data when new or additional information is available. Ref. Section 72-1337, Idaho Code.

(3-19-99)

133. (RESERVED)

134. PROFESSIONAL EMPLOYER ORGANIZATIONS.

A professional employer organization shall fully comply with the requirements of the Professional Employer Recognition Act, Chapter 24, Title 44, Idaho Code in order to be eligible for any transfers of experience rating as allowed by Section 72-1349B, Idaho Code.

(3-15-02)

01. Methods of Reporting. To report the wages and employees covered by the professional employer arrangement between a professional employer and client, professional employers and their clients shall make reports to the Department in one (1) of the following ways, subject to the conditions in Subsections 134.02 through 134.06 of this rule:

(3-15-02)

a. Report the workers included in the professional employer arrangement under the employer account number of the professional employer and transfer the rate of the client to the professional employer; or

(3-15-02)

b. Report the workers included in the professional employer arrangement under the employer account number of the client without an experience rate transfer. Ref. Section 72-1349B, Idaho Code.

(3-15-02)

02. Joint Transfer of Experience Rate. In order to effect a transfer of a client's experience rate into the experience rate of a professional employer organization, both the client and the professional employer organization shall jointly apply for the transfer of the experience rate within the same timeframes as required of employers by Section 72-1351(5), Idaho Code, from the date of the contract entered into between the professional employer organization and the client required by Section 44-2405, Idaho Code. Failure to submit a timely joint

request for transfer of experience rate shall result in the professional employer organization reporting wages for the client under the employer account number of the client. Ref. Section 72-1351(5), Idaho Code. (3-22-07)

03. Partial Transfers of Experience Rate Prohibited. In the event that a client and a professional employer organization jointly apply to transfer the experience rate of the client into that of the professional employer, the client's entire experience rate and factors of experience rate shall be transferred into that of the professional employer, and no partial transfers of experience factors or the experience rate shall be allowed. Ref. Section 72-1349B, Idaho Code. (3-15-02)

04. Partial Reporting of Workers. If some of the client's workers are included in the professional employer arrangement and some are not included, and the professional employer organization and the client elect to report the workers included in the professional employer arrangement under the employer account number of the client, then only one (1) quarterly report shall be remitted to the Department, which shall list or include all the client's workers whether or not included in the professional employer arrangement. Ref. Section 72-1349B, Idaho Code. (3-15-02)

05. Combined Wages or Services for Purposes of Coverage. If a client employer has employees or employment, or both, that does not independently meet the coverage or threshold requirements necessary to constitute covered employment, such employees, services or employment shall nonetheless be deemed to meet the coverage requirements of the Employment Security Law if, in combination with other employees, employment or services of such other employees of the professional employer organization or any of its clients, such wages, services or employees do jointly meet coverage requirements. (3-15-02)

135. -- 165. (RESERVED)

166. FIELD OPERATIONS CONTROL.

When circumstances dictate, and as a result of nonpayment of liabilities, the employer shall be notified by mail to the last known address of lien proceedings against the employer's interests, with an explanation of the amounts due, and the accrual of interest at the proper rate until the lien is satisfied. Ref. Section 72-1360, Idaho Code. (4-11-06)

01. Limitation for Commencing Administrative Procedures. The director may commence an administrative proceeding for purposes of establishing a tax liability, or otherwise to enforce the provisions of Section 72-1349, Idaho Code, by issuing a determination at any time within five (5) years from the due date of a quarterly report or the date a quarterly report is filed, whichever is later, subject to tolling pursuant to Section 72-1349, Idaho Code. ()

a. Notification of Audits. Employers shall be notified as soon as practicable of an impending payroll records audit for tax liability purposes. This shall allow time in which to agree as to a convenient time and place for audit. Ref. Section 72-1337, Idaho Code. (3-19-99)

b. Frequency of Audits. The frequency of audits or inspections of an employer's records to ensure compliance with the law and Department rules shall be based on the following criteria: (3-30-01)

i. On the basis of random selection and other selection criteria in accordance with federal requirements; (3-30-01)

ii. As a result of information received from any source, provided that the information received is of such a nature that it would be reasonable to conduct an audit or inspection of records as a result of that information; or (3-30-01)

iii. As a result of a previous audit, if the business practices or records of the employer are of such a nature that it would be reasonable for a Department employee to re-inspect or re-audit the records to ensure future compliance with the law. Ref. Section 72-1337, Idaho Code. (3-30-01)

02. Execution Against Assets. The Department of Labor, when the situation warrants, shall levy upon or execute against any real or personal property, both tangible and intangible, in which an indebted person has an interest, including any offsets as allowed by Section 67-1026, Idaho Code. Ref. Section 72-1360, Idaho Code. (3-30-01)

03. Relief of Indebtedness. Neither the full running of the statute of limitations nor the writing off of the account as uncollectible relieves an employer of tax indebtedness. Ref. Section 72-1364, Idaho Code. (3-30-01)

167. -- 185. (RESERVED)

186. ACCOUNTING AND DELINQUENCY CONTROL.

Overpayments on employer accounts may be refunded without written application by the employer. Credits resulting from overpayments or adjustments to an employer's account shall be refunded periodically unless such credit is applied to a subsequent balance due. Ref. Section 72-1357, Idaho Code. (3-19-99)

01. Erroneous Wage Reports. An employer submitting an erroneous report of employee wages resulting in payment of unearned unemployment insurance benefits shall have said benefit payments subtracted from any refund due that employer, if such employer benefited from the unearned benefit payments. Ref. Section 72-1372, Idaho Code. (4-11-06)

02. Notification of Underpayments. Employers shall be notified periodically of any taxes, penalties, or lien interest due on their tax account. Ref. Section 72-1349, Idaho Code. (3-19-99)

03. Cancellation of Refund Warrants. Refund warrants, outstanding after the validity date, shall be canceled, stop-payment procedures initiated, and then reissued only upon completion of an affidavit for the replacement of the lost or destroyed warrant. Ref. Section 72-1357, Idaho Code. (4-11-06)

187. -- 220. (RESERVED)

221. TRANSFER OF EXPERIENCE RATING.

Upon request, employers shall be informed of the requirements for transferring an experience rating record. Notification shall be issued to interested parties when an experience rating record transfer request is made. Ref. Sections 72-1351 and 72-1351A, Idaho Code. (4-11-06)

01. Mandatory Transfer of Rate. An experience rating record transfer shall be mandatory if there is a transfer of trade or business and ownership or management or control is substantially the same between the predecessor and successor. The parties in interest shall be notified of such transfer of experience as determined from the facts applicable to the case. The determination shall be in the form required by IDAPA 09.01.01.027.01, and become final if no appeal is taken to an appeals examiner pursuant to the Rules of Administrative Procedure of the Department of Labor. ()

02. Partial Experience Rate Transfers. The following method is used to compute the pro-rata share of the experience rate account that is to be transferred from the predecessor to a successor. The pro-rata share is determined by dividing the gross payroll associated with the portion of the business acquired by the total gross payroll for the entire business operations for the same time period. The time period upon which this computation is based is the four (4) most recently completed quarters as reported by the predecessor prior to the date of acquisition or change in entity. (4-11-06)

03. Continued Predecessor Employment for Liquidation. When a total transfer of experience rating record has been completed and it is found that the predecessor employer continues to have employment in connection with the liquidation of his business, such employer shall continue to pay contributions at the assigned rate for the period of liquidation but not to extend beyond the balance of the rate year. Ref. Section 72-1351, Idaho Code. (3-19-99)

04. Management or Ownership or Control Substantially the Same. For the purposes of Subsection 72-1351A, Idaho Code, in determining whether the ownership or management or control of a successor is substantially the same as the ownership or management or control of the predecessor factors to be considered include, but are not limited to, the extent of policy making authority, the involvement in daily management of operations, the supervision over the workforce, the percentage of ownership of shares or assets, and the involvement on boards of directors or other controlling bodies. (4-11-06)

05. Wage Paid by Predecessor. The successor employer may use wages paid by the predecessor employer to arrive at the wage base for purposes of calculating taxable wages only when the experience rate of a predecessor employer has been transferred to a successor employer. Ref. Sections 72-1349(1), 72-1351(5), and 72-1350(8), Idaho Code. (4-11-06)

222. -- 230. (RESERVED)

231. EXPERIENCE RATING -- QUALIFYING PERIOD.

When an eligible employer ceases to have covered employment for a period of six (6) consecutive quarters or more, they must complete another qualifying period in order to again be eligible for consideration for a reduced contribution rate. Ref. Section 72-1319, Idaho Code. (4-11-06)

232. -- 240. (RESERVED)

241. BOARD, LODGING, MEALS.

When board, lodging, meals, or any other payment in kind considered as payment for services performed by an employee constitute a part of wages or wholly comprise an employee's wages, the value of such board, lodging, or other payment shall be determined as follows: (3-19-99)

01. Cash Value. If a cash value for such board, lodging, or other payment is agreed upon in any contract of hire, the amount so agreed upon shall be used provided it is a reasonable, fair market value. If there is no agreement, or if the contract of hire states an amount less than a reasonable, fair market value, the Department of Labor shall determine the reasonable or fair market value to be used. Ref. Section 72-1328, Idaho Code. (3-30-01)

02. Meals and Lodging Not Included in Gross Wages. The value of meals and lodging furnished by an employer to the employee will not be included in the employee's gross income if it meets the following tests: (4-11-06)

- a.** The meals or lodging are furnished on the employer's business premises; (3-19-99)
- b.** The meals or lodging are furnished for the employer's convenience; and (3-19-99)
- c.** In the case of lodging (but not meals), the employees must be required to accept the lodging as a condition of their employment. This means that they must accept the lodging to allow them to properly perform their duties. (3-29-10)

d. In order to exclude the value of lodging from an employee's gross wages, the employer must show that the wages paid to the employee for services performed meets the prevailing wage for those services. If the employer's records do not show or establish that the employee received the prevailing wage for services performed, then the reasonable or fair market value of the lodging will be included in the employee's gross income as wages. Ref. Section 72-1328, Idaho Code. (3-29-10)

03. Meals or Lodging for Employer Convenience. Meals or lodging furnished will be considered for the employer's convenience if the employer has a substantial business reason other than providing additional pay to the worker. A statement that the meals or lodging are not intended as pay is not enough to prove that either meals or lodging are furnished for the employer's convenience. Ref. Section 72-1328, Idaho Code. (3-19-99)

04. Subsistence Remuneration. In the case of employees who receive remuneration in the form of subsistence, such as groceries, staples, and fundamental shelter, the fair value of such subsistence will be determined by the Director. Ref. Section 72-1328, Idaho Code. (3-19-99)

242. -- 255. (RESERVED)

256. DETERMINATION OF FAIR VALUE OF REMUNERATION FOR PERSONAL SERVICES.

When the amount paid to an employee by an employer includes remuneration for other than personal services such as equipment use, travel costs, etc., the Director shall determine the fair value of the remuneration for the employee's personal services. In making such determination, the Director shall consider the wages specified in the contract of

hire, the prevailing wages for similar work under comparable conditions, and other pertinent factors. The wages so determined by the Director shall be reported by the employer. Ref. Section 72-1328, Idaho Code. (3-19-99)

257. -- 261. (RESERVED)

262. DETERMINATION OF PROPER QUARTER IN WHICH TO ASSIGN AND REPORT WAGES.

01. Wage Assignment to Proper Calendar Quarter. Wages paid shall be assigned to the calendar quarter in which the wages were: (3-29-10)

a. Actually paid to the employee in accordance with the employer's usual and customary payday as established by law or past practice; or (3-30-01)

b. Due the employee in accordance with the employer's usual and customary payday as established by law or past practice but not actually paid on such date because of circumstances beyond the control of the employer or the employee; or (3-30-01)

c. Not paid on the usual or customary payday as established by law or past practice but set apart on the employer's books as an amount due and payable or otherwise recognized as a specific and ascertainable amount due and payable to the worker in accordance with an agreement or contract of hire under which services were rendered. Ref. Section 72-1367, Idaho Code. (3-19-99)

02. Draws and Advances on Wages. Payments to employees made prior to regular or established paydays will be assignable and reportable during the quarter in which they would have been paid unless a practice is established whereby all employees or a class of employees are given an opportunity to take a "draw" by which such action, another "regular" payday appears to have been created. (3-19-99)

03. Judgments of Wages. Amounts received as a result of labor relations awards or judgments for back pay, or for disputed wages, constitute wages and will be reported in the quarter or quarters in which the award or judgment has become final, after all appeals have been exhausted, or the quarter or quarters to which the court assigns the wages, if different. Ref. Section 72-1328, Idaho Code. (3-15-02)

04. Awarded Damages Against Employers. Amounts awarded to the claimant as a penalty or damages against the employer, other than for lost wages, do not constitute wages. Ref. Section 72-1328, Idaho Code. (3-19-99)

263. DETERMINATION OF REPORTABLE QUARTERS.

An employer shall be covered for all four (4) quarters in the calendar year in which the employer becomes a covered employer as well as for all four (4) quarters in the succeeding calendar year. Employers are not required to file quarterly reports until meeting the coverage criteria pursuant to Section 72-1315, Idaho Code. Upon becoming a covered employer within a calendar year, the quarterly report(s) for the quarter(s) prior to the employer becoming covered shall be filed with the quarterly report for the quarter in which the employer became covered. Quarterly reports for the periods subsequent to coverage shall be filed when due after the end of each quarter. Ref. Sections 72-1315 and 72-1337, Idaho Code. (3-22-07)

264. -- 999. (RESERVED)

**09.01.60 – COMPLAINT PROCEDURES UNDER THE WORKFORCE INNOVATION
AND OPPORTUNITY ACT (WIOA)**

000. LEGAL AUTHORITY.

These rules are promulgated Section 72-1333(2), Idaho Code.

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001. TITLE AND SCOPE.

01. Title. IDAPA 09.01.60, “Complaint Procedures Under the Workforce Innovation and Opportunity Act.”

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02. Scope. These rules govern the procedures for processing and adjudicating discrimination and program complaints by or against any program or activity funded or authorized under Title I of the federal Workforce Innovation and Opportunity Act.

(3-15-02)

a. Discrimination Complaints. The Workforce Innovation and Opportunity Act prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and discrimination against beneficiaries on the basis of either citizenship or status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIOA Title I financially assisted program or activity; and incorporates the provisions of Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin; Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities; The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs. A complaint alleging a violation of any of these provisions is a discrimination complaint which shall be processed and adjudicated according to the discrimination complaint procedures provided for in these rules. Further, no entity receiving financial assistance under WIOA may discharge, intimidate, retaliate against, threaten, coerce, or discriminate against any person because such person has filed a complaint, opposed a prohibited practice, furnished information, assisted, or participated in any manner in an investigation or hearing. These actions are also considered discrimination and are enforced under this rule’s discrimination complaint procedures.

(3-15-02)

b. Program Complaints. Complaints that do not allege unlawful discrimination or retaliation, and instead involve the proper application of the Workforce Innovation and Opportunity Act and its regulations and policies are program complaints, which shall be processed and adjudicated according to the program complaint procedures provided for in these rules.

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002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Department. Idaho Department of Labor.

(3-15-02)

02. Local Administrative Entity. The administrative entity that administers the workforce investment system within a designated local area.

(3-15-02)

03. One-Stop Operator. One (1) or more entities designated or certified under the provisions of WIOA to operate a One-Stop Center.

(3-15-02)

04. Service Provider. Any operator or provider of aid, benefits, services, or training to any WIOA Title I funded program or activity that receives financial assistance either from or through the Department or a WIOA recipient, or for any participant through that participant's Individual Training Account; or any entity that is selected or certified as an eligible provider of training services to participants.

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05. WIOA Recipient. Any entity receiving financial assistance under WIOA Title I from or through the Department, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiaries of the WIOA Title I-funded program or activity.

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011. ABBREVIATIONS.

Unless the context clearly requires otherwise, these abbreviations shall have the following meanings when used in this chapter.

(3-15-02)

01. CRC. Civil Rights Center of the U.S. Department of Labor.

(3-15-02)

02. **EO. Equal Opportunity.** (3-15-02)

03. **WIOA. Workforce Innovation and Opportunity Act.** (3-15-02)

012. DISCRIMINATION COMPLAINTS.

Complaints alleging discrimination must be in writing and may be filed by the complainant or the complainant's designated representative with the Department, Local Administrative Entity, Service Provider, or One-Stop Operator and must contain the information required by, and be processed in accordance with, the Department's WIOA nondiscrimination plan and other applicable policies and procedures adopted by the director. The plan and those policies and procedures must explain that written complaints may be taken by the Department, Local Administrative Entity, Service Provider, or One-Stop Operator, and also may also be filed directly with the Director, CRC, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210. ()

01. Confidential Information. Information that could lead to the identification of the person filing the complaint shall be kept confidential unless disclosure is required by law or is necessary for conducting an investigation or engaging in enforcement activities. (3-15-02)

02. Jurisdiction. In order to have jurisdiction to process and adjudicate a discrimination complaint the respondent against whom the complaint was filed must be a WIOA recipient, the complaint must allege a basis for discrimination that is prohibited by WIOA, and the complaint must be filed within one hundred eighty (180) days of the alleged discrimination. (3-15-02)

03. Notice of Lack of Jurisdiction. If a determination is made that there is no jurisdiction to process the complaint, a Notice of Lack of Jurisdiction must be sent to the complainant that includes the reason for the determination and notice that the complainant has the right to file a complaint directly with CRC within thirty (30) days from receipt of the Notice of Lack of Jurisdiction. (3-15-02)

04. Joint Jurisdiction. Where the complaint alleges discrimination by a WIOA recipient or service provider on a basis that is prohibited by both WIOA and by a civil rights law independently enforced by that WIOA recipient or service provider, the complaint must be referred to that WIOA recipient or service provider for processing under their procedures. For example, WIOA prohibits discrimination on the basis of national origin. If a discrimination complaint on the basis of national origin is made against a WIOA recipient or service provider and they are also prohibited under their own regulations from discriminating on the basis of national origin, then the complaint shall be referred to that WIOA recipient or service provider for processing according to their regulations. Notice of the referral must be sent to the complainant. (3-15-02)

05. Sole Jurisdiction. Where the complaint alleges discrimination by a WIOA recipient or service provider on a basis that is prohibited by WIOA and is not covered by a civil rights law independently enforced by that WIOA recipient or service provider (e.g. religion, political affiliation or belief, citizenship or participation in WIOA Title I), the complaint shall be processed by that WIOA recipient or service provider under these procedures. (3-15-02)

013. PROGRAM COMPLAINTS AGAINST LOCAL WIOA PROGRAMS AND POLICIES.

Participants, One-Stop partners, service providers, and other interested parties may file complaints alleging nondiscriminatory, non-criminal violations of the WIOA agreements, policies or activities of a Local Administrative Entity or local service provider. Local program complaints shall be in writing and shall be filed with the local service provider or local administrative entity against whom the complaint is made within one hundred eighty (180) days from the date of the event or condition that is alleged to be a violation of WIOA. A complaint may be amended prior to a scheduled hearing or withdrawn by the complainant at any time. Information about the identity of the person filing the complaint or to the identity of any person who furnishes information relating to, or assisting in, an investigation, shall be kept confidential from non-parties to the complaint process unless disclosure is required by law. No entity receiving financial assistance under WIOA may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any person because such person has filed a complaint, opposed a prohibited practice, furnished information, assisted, or participated in any manner in an investigation or hearing. (3-15-02)

01. Initial Review. Written complaints shall be taken by the local service provider or local

administrative entity from the complainant or the complainant's designated representative. All complaints shall be logged. If the complaint alleges a violation of any statute, regulation, policy, or program that is not governed by WIOA, the complaint shall be referred to the appropriate organization for resolution. Notice of the referral shall be sent to the complainant. If the complaint is retained, the complaint and its file must contain the information required by, and be processed in accordance with, Department policies and procedures adopted by the director. ()

014. PROGRAM COMPLAINTS AGAINST STATEWIDE WIOA PROGRAMS AND POLICIES.

Participants, One-Stop partners, service providers and other interested parties may file complaints alleging nondiscriminatory, non-criminal violations of statewide WIOA agreements, policies or activities. Statewide program complaints shall be in writing and shall be filed with the statewide service provider or the Department within one hundred eighty (180) days from the date of the event or condition that is alleged to be a violation of WIOA. A complaint may be amended prior to a scheduled hearing or withdrawn at any time. Information about the identity of the person filing the complaint or to the identity of any person who furnishes information relating to, or assisting in, an investigation, shall be kept confidential from non-parties to the complaint process unless disclosure is required by law. No entity receiving financial assistance under the Act may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any person because such person has filed a complaint, opposed a prohibited practice, furnished information, assisted, or participated in any manner in an investigation or hearing. (3-15-02)

01. Initial Review. Written complaints shall be taken from the complainant or the complainant's designated representative. All complaints shall be logged. If the complaint alleges a violation of local WIOA programs, policies or agreements, the complaint shall be referred to the local administrative entity for processing under the complaint procedures for program complaints against local WIOA programs. If the complaint alleges a violation of any statute, regulation, policy, or program that is not governed by WIOA, the complaint shall be referred to the appropriate organization for resolution. Notice of the referral shall be sent to the complainant. If the complaint is retained, the complaint and its file must contain the information required by, and be processed in accordance with, Department policies and procedures adopted by the director. ()

015. -- 999. (RESERVED)

09.02.01 – RULES OF THE DISABILITY DETERMINATIONS SERVICE

000. LEGAL AUTHORITY.

These rules are promulgated under Section 72-1333, Idaho Code.

()

001. TITLE AND SCOPE.

01. **Title.** IDAPA 09.02.01, “Rules of the Disability Determinations Service.”

()

02. **Scope.** These rules govern time limits for submission of invoices by vendors for payment for services. (4-2-08)

002. (RESERVED)

003. ADMINISTRATIVE APPEALS.

There is no administrative appeal from any proceedings brought pursuant to this chapter.

(4-2-08)

004. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Consultative Examinations.** Consultative examinations include physical and mental examinations, x-rays, laboratory tests, and special diagnostic studies from qualified sources. (4-2-08)

02. **Medical Evidence of Record.** Medical evidence of record includes medical history reports, medical opinions, treatment records, copies of laboratory reports, prescriptions, ancillary tests, x-rays, operative and pathology reports, consultative reports, and other technical information used to document disability claims. ()

03. **Travel.** Travel includes costs associated with applicants, beneficiaries, recipients, and other authorized individuals in connection with attending consultative examinations or disability hearings by commercial carrier (air, rail, taxi, shuttle, or bus), or privately owned vehicles. ()

04. **Interpretive Services.** Interpretive services include authorized contracted interpreters for individuals with limited English proficiency or requiring language assistance for a consultative examination or disability hearing. (4-2-08)

011. -- 021. (RESERVED)

022. PAYMENT FOR SERVICES.

In order to receive payment for services provided, submission of bills must be within one year from date of service. This includes consultative examinations, medical evidence of record, travel, and interpretative services. ()

023. -- 999. (RESERVED)

09.05.03 – RULES FOR DETERMINING BARGAINING REPRESENTATIVES

000. LEGAL AUTHORITY.

These rules are promulgated under Section 72-1382, Idaho Code, and Title 67, Chapter 52, Idaho Code. ()

001. TITLE AND SCOPE.

01. **Title.** IDAPA 09.05.03, “Rules for Determining Bargaining Representatives.” ()

02. **Scope.** The rules govern all proceedings before the Department brought pursuant to Section 72-1382, Idaho Code, or concerning mediation proceedings brought pursuant to Section 72-1381, Idaho Code. IDAPA Sections 09.05.03.011, 09.05.03.012, 09.05.03.013, and 09.05.03.014 relate only to powers concerning determination of representation under Section 72-1382, Idaho Code, and for conciliation and mediation purposes under Section 72-1381, Idaho Code. ()

002. (RESERVED)

003. ADMINISTRATIVE APPEALS.

There is no administrative appeal under this chapter. ()

004. -- 011. (RESERVED)

012. UNION AGREEMENTS AND INSULATED PERIOD.

Once the contract becomes effective as a bar to an election, no petition will be accepted until the end of the period during which the contract is effective as a bar. A contract for a fixed period of more than three (3) years will bar an election sought by a contracting party during the life of the contract, but will act as a bar to an election sought by an outside party for only three (3) years following its effective date. A contract of no fixed period will not act as a bar at all. Petitions filed not more than ninety (90) days but over sixty (60) days before the end of the contract bar period will be accepted and can bring about an election, or if a petition is filed after a contract expires it will be accepted. The last sixty (60) days of the contract bar period is called an insulated period. During that time the parties to the existing contract are free to negotiate a new contract or to agree to extend the old one. If they do so, petitions will not be accepted until ninety (90) days before the end of the new contract bar period. (1-21-74)

013. STRIKERS DEEMED EMPLOYEES.

Strikers are deemed to be employees even though replaced by other workers for representation purposes only and may be entitled to vote in any election conducted within twelve (12) months after the commencement of the strike. (1-21-74)

014. EMPLOYEE REPRESENTATION.

01. **Petition or Union Representation.** Any employer, union, or employee may petition the Department to conduct an investigation and/or hearing to determine whether the majority of the employees of any given business wish union representation and what union they wish to be represented by. Such petition must fully set forth and allege the exact question concerning representation of employees in the collective bargaining unit. The request must fully state the name of the employer, the place of business, the type of business, the name of the labor organization or organizations involved; and if the request is made by the employer it must include a list of employees employed in said unit. (1-21-74)

02. **Requests Made by Unions.** If the request is made by a union, such union must submit written statements or authorization cards from at least thirty percent (30%) of those workers in the unit to establish there is such a question of representation, except in establishments having less than six (6) employees, in which case twenty-five percent (25%) of the employees involved will be deemed sufficient. A description of the bargaining unit must be given. (1-21-74)

03. **Collective Bargaining Unit.** When a question arises concerning representation of employees in a collective bargaining unit the Department will investigate in order to determine the wishes of the majority of the employees in said unit. ()

04. **Hearings.** In any such investigation, a hearing may be held after giving due notice to all interested parties as provided for in the procedural rules of the Department. If as a result of such hearing or investigation the parties agree which union, if any, may properly represent them, a certification will be made and issued by the Director of the Department designating the union for bargaining purposes. If after such a hearing and/or investigation, there is

any doubt as to the wishes of the majority of the employees employed in said unit, a time and place will be scheduled to permit the employees to vote by secret ballot. (1-21-74)

05. Preparation of Ballot. In all cases where a secret ballot is taken, the ballot must be prepared by the Department to permit a vote for or against representation by anyone named on the ballot. In case of two (2) or more unions, a place must be provided for a vote against any union. (1-21-74)

06. Waiver of Investigation and Hearing. The investigation and hearing may be waived by consent of the parties pursuant to written stipulation by all parties involved, and a cross check may be conducted by representatives of the Department. Such cross check will be made by comparing the signatures or names appearing on the employer's payroll with signatures on authorization cards submitted by the union involved. At such cross check, no representatives will be permitted to be present except representatives of the Department. The Department may, at its discretion, also question individual employees. (1-21-74)

07. Elections. If it becomes necessary to conduct an election, such election will be held only after appropriate notice is posted by the department in a conspicuous place where the employees are employed. Whenever possible, the election will be held on the premises of the employer and at a time calculated to best permit all employees who are eligible to vote, and so far as possible at a time which will minimize the disruption of the employer's business. Such notice must be posted at least twenty-four (24) hours before the election and in those cases where, because of the nature of the shifts, a longer time is necessary, it shall be so given. Every effort will be made to hold the election reasonably soon after the twenty-four (24) hour period except in those exceptional cases. (1-21-74)

08. Observers. The parties involved may each designate and have present at the election only one (1) observer. Neither management nor union officials may act as observers. Employees having the right to hire or fire or to effectively recommend hiring or firing will be considered as management personnel of the employer and will not be permitted to vote at such election or to act as observers. No member of an employer's immediate family will be eligible to vote at such representation election or to act as an observer, or any principal stockholder owning ten percent (10%) or more of the company stock. (1-21-74)

09. Voting Eligibility. All employees in said bargaining unit on the payroll at the time the petition was received in the Department may vote. Regular part-time employees will be permitted to vote. Casual part-time employees or workers who are employed for a limited period will not be permitted to vote. (1-21-74)

10. Challenging Eligibility. Any interested party or representative of the Department may challenge the eligibility of any person to participate in the election for cause under these rules. The ballots of such challenged person will be impounded. Upon conclusion of the election and before the ballots are counted, the parties will be permitted to offer evidence in support of their contentions as to eligibility to vote, after which time a ruling will be made sustaining or overruling the objection. If overruled, the ballot will be placed in the ballot box. (1-21-74)

11. Ballots. Ballots prepared by the Department will set forth the question involved. One ballot will be given to each eligible voter. Such ballots are not to be signed by the voters. Voters will be requested to place an "X" in a square which will require only "YES" or "NO" votes. The ballot must be prepared to permit a vote against any representation. (1-21-74)

12. Deauthorization of Union Representation. A petition in a union shop for an election to determine whether there should be any union representation or not, may be filed with the Department. In such petition, it must be shown at least thirty percent (30%) or more of the employees in the unit covered by the agreement desire deauthorization. Only employees in the bargaining unit will be counted for this purpose subject to the provisions of Subsection 014.12. (1-21-74)

13. Petition for Election. The demand or petition set forth in Subsection 014.12 need not be in any particular form, but must comply with the procedural rules of the Department. No such election as set forth in Subsection 014.12 will be conducted among employees presently covered by a valid collective bargaining agreement, except when filed in accordance with the reopening or termination clause of such agreement. (1-21-74)

14. Existing Collective Bargaining Agreement. An existing collective bargaining agreement is a bar to any representation election except as provided for within Section 012. (1-21-74)

15. Frequency of Election. No election may be held in any bargaining unit or subdivision thereof within which a valid election was held in the preceding twelve (12) month period. (1-21-74)

015. -- 999. (RESERVED)

IDAPA 09 – IDAHO DEPARTMENT OF LABOR
09.01.30 – UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES
DOCKET NO. 09-0130-1902
NOTICE OF RULEMAKING – PROPOSED RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 72-1333, 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 September 18, 2019.

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 intended changes to 09.01.30.175.20 will:

1. Define the circumstances under which an unemployment insurance claimant can leave the local labor market area to attend training or school; and
2. Specify unemployment insurance claimants cannot leave the country while collecting benefits.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 3, 2019 Idaho Administrative Bulletin, [Vol. 19-7, pages 156-157](#) and in the May 1, 2019 Idaho Administrative Bulletin, [Vol. 19-5, page 61](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Josh McKenna, UI Benefits Bureau Chief at (208) 332-3577 x 3919.

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 September 25, 2019.

Dated this 2nd day of August, 2019.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0130-1902

175. AVAILABLE FOR WORK.

The phrase “available for work” is defined as a state of mind which involves a readiness and willingness to work, and a desire to find a job, including the possibility of marketing one’s services in the claimant’s area of availability. There must remain a reasonable possibility of a claimant finding and obtaining, or being referred and hired for, suitable work. Ref. Sec. 72-1366(4), Idaho Code. (3-19-99)

01. Availability Requirements. The type of work for which the claimant is available must exist in the claimant’s area to the extent that a normal unemployed person would generally find work within a reasonable period of time. (3-19-99)

02. Child Care. Child care must be arranged so as not to restrict a claimant’s availability for work or for seeking work. (3-19-99)

03. Compelling Personal Circumstances. For the purposes of this rule, compelling personal circumstances are defined as: (6-30-19)T

a. A situation in which the claimant required the assistance of emergency response personnel; (4-11-06)

b. The serious illness or death or funeral of an immediate family member; or (4-11-06)

c. The wedding of the claimant or an immediate family member. (4-11-06)

d. For the purposes of this rule, “immediate family member” is defined as a claimant's spouse, child, foster child, parent, brother, sister, grandparent, grandchild, or the same relation by marriage. (4-11-06)

e. For the purposes of this rule, “workweek” is defined: (6-30-19)T

i. Code R, U, or X. The claimant's normal work week as defined by the employer. (6-30-19)T

ii. Code B or C. Monday through Friday, 8 a.m.-5 p.m. (6-30-19)T

iii. Code D. Regular class hours. (6-30-19)T

f. Claimant work availability requirements are waived on Independence Day, Thanksgiving Day, Christmas Day, and New Year's Day. (6-30-19)T

04. Conscientious Objection. No person may be held to be unavailable for work solely because of religious convictions not permitting work on a certain day. (3-19-99)

05. Contract Obligation. A person who is bound by a contract that prevents him from accepting other employment is not eligible for benefits. (3-19-99)

06. Distance to Work. A claimant seeking work must be willing to travel the distance normally traveled by other workers in his area and occupation. (3-19-99)

07. Domestic Circumstances. A claimant is not eligible for benefits if domestic circumstances take precedence over the claimant’s availability for work or for seeking work. (3-19-99)

08. Equipment. Claimants will be required to provide necessary tools or equipment in certain occupations. The lack of these tools or equipment will directly affect a claimant’s availability for work, unless he will

accept other work. (3-19-99)

09. Evidence. A claimant is responsible for providing proof of his availability for work and for seeking work if his availability is questioned or proof is required by these rules. (3-19-99)

10. Experience or Training. A claimant is expected to be available for work consistent with his past experience or training, provided there is no change in his ability to perform that work. (3-19-99)

11. Full-Time/Part-Time Work. To be eligible for benefits, a claimant must be available for a full workweek and a full, normal workday unless the claimant establishes that a majority of the weeks worked in his base period were for less than full-time work or the claimant establishes eligibility under the Americans with Disabilities Act. An individual who restricts his availability to part-time work pursuant to Section 72-1366(4)(c), Idaho Code, will be considered fully employed and ineligible to receive benefits if the individual works hours comparable to his part-time work experience in his base period. (3-29-10)

12. Incarceration/Work Release. A claimant who is incarcerated for any part of the claimant's normal workweek is not eligible for benefits for that week, unless the claimant can establish he has work release privileges which would provide him a reasonable opportunity to meet his work search requirements and obtain full-time employment. (3-19-99)

13. Jury Duty/Subpoenas. A claimant serving on jury duty or subpoenaed is excused from the availability and work-seeking requirements of the law for that time period. A claimant is not ineligible if he must refuse work because of the jury duty or subpoena. (3-19-99)

14. Licensing or Government Restrictions. A claimant prohibited by law from engaging in certain work must be available for other employment to be eligible for benefits. (3-19-99)

15. Moving to Remote Area. A claimant who moves to a remote locality where there is very little possibility of obtaining work will be ineligible for benefits. (3-19-99)

16. Public Official. A public official who receives pay and performs "full-time" service is not unemployed or eligible for benefits. Part-time officials, even though receiving pay, may be considered available for work the same as any other individual employed on a part-time basis. Ref. Sec. 72-1312(1). (3-19-99)

17. Public Service. Performing public service, including voluntary non-remunerated service, does not disqualify an individual for benefits as long as he is meeting the availability and work-seeking requirements. (3-19-99)

18. Restricting Work to Within the Home. A claimant who restricts his availability to only work done within the home which severely limits the work available to him is ineligible for benefits. (3-19-99)

19. School Attendance or a Training Course. A person who is attending school or a training course may be eligible for benefits if the attendance does not conflict in any way with that person's availability for work or for seeking work and if he will discontinue attendance upon receipt of an offer of employment if there is a conflict between employment and the schooling or training. (3-19-99)

20. Temporary Absence from Local Labor Market to Seek Work. All claimants, regardless of their attachment to an industry or employer, must meet the same standard of remaining within their local labor market area during the workweek in order to be considered available for work, unless the primary purpose of a temporary absence is to seek work in another labor market; ~~provided, however, e~~ claimants otherwise eligible to receive benefits while participating in an approved training program or course are not deemed ineligible when the training or course occurs outside of their local labor market due to the unavailability of similar programs or courses within their local labor market. (6-30-19)T()

a. To remain eligible for benefits, claimants will remain within the state, territory, or country included in the USDOL Interstate Benefit Payment Plan. ()

- 21. Time.** (3-19-99)
- a.** Time Restrictions. A claimant may not impose restrictions on his time, including either hours of the day or days of the week, which will limit his availability to seek or accept suitable work. (3-19-99)
- b.** Shift Restrictions. A claimant who restricts his availability to a single shift may not be fully available for work if the restriction significantly reduces his chances of becoming employed. (3-19-99)
- 22. Transportation Difficulties.** Lack of transportation is not a bona fide reason for a claimant to fail to be available for or to seek work. Transportation is the responsibility of the claimant. (3-19-99)
- 23. Unreasonable Restrictions on Working Conditions.** A claimant who places unreasonable restrictions on working conditions so as to seriously hinder his availability and search for work is ineligible for benefits. (3-19-99)
- 24. Vacation.** A person on a vacation approved by his employer during time when work is available is not considered available for work nor eligible for benefits. (3-19-99)
- 25. Wages.** A claimant is not ineligible for benefits if the wages or other conditions of available work are substantially less favorable to the claimant than those prevailing for similar work in the local area. Ref. Sec. 72-1366(7)(b), Idaho Code. (3-19-99)
- a.** Demanding Higher Wages. A claimant is ineligible for benefits if he unduly restricts his availability for work by insisting on a wage rate that is higher than the prevailing wage for similar work in that area. (3-19-99)
- b.** Prior Earnings. The claimant's prior earnings and past experience are considered in determining whether he is available for suitable work. (3-19-99)
- 26. Waiver of Two-Year Training Limitation.** For purposes of approving a waiver of the two (2) year limitation on school or training courses, specified by Idaho Code Section 72-1366(8)(c)(ii), for claimants who lack skills to compete in the labor market, the following criteria must be met: (6-30-19)T
- a.** Financial Plan. The claimant must demonstrate a workable financial plan for completing the school or training course after his benefits have been exhausted. (3-19-99)
- b.** Demand for Occupation. The claimant must establish there is a demand for the occupation in which the claimant will be trained. A "demand occupation" is one in which work opportunities are available and there is not a surplus of qualified applicants. (3-19-99)
- c.** Duration of Training. At the time that the claimant applies for the waiver, the duration of the school or training course is no longer than two (2) years to completion. (3-19-99)
- d.** Denial. No claimant will be denied a waiver of the two (2) year limitation on school or training because the claimant is already enrolled or participating in the school or training at the time he requests the waiver. (6-30-19)T

IDAPA 09 – IDAHO DEPARTMENT OF LABOR
09.01.30 – UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES
DOCKET NO. 09-0130-1903
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[**LINK: LSO Rules Analysis Memo**](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 72-1333, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and 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 the change. The intended changes to IDAPA 09.01.30 will:

1. Clarify unemployment insurance benefit eligibility for individuals with disabilities as determined by Idaho law;
2. Identify unemployment insurance claimants as responsible for providing competent evidence they are qualified individuals with disabilities under the Americans with Disabilities Act; and
3. Remove language concerning long-term disability inconsistent with the definition of disability under the Americans with Disabilities Act.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2019 Idaho Administrative Bulletin, [**Vol. 19-9, pages 170-174**](#).

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Josh McKenna, UI Benefits Bureau Chief at (208) 332-3577 x3919.

Dated this 2nd day of October, 2019.

Josh McKenna
UI Benefits Bureau Chief
Idaho Department of Labor – UI Division
219 Main Street
Boise, ID 83735
Phone: (208) 332-3577 x 3919
Fax: (208) 639-3256

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 72-1333, 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 September 18, 2019.

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 intended changes to IDPA 09.01.30 will:

1. Clarify unemployment insurance benefit eligibility for individuals with disabilities as determined by Idaho law;
2. Identify unemployment insurance claimants as responsible for providing competent evidence they are qualified individuals with disabilities under the Americans with Disabilities Act; and
3. Remove language concerning long- term disability inconsistent with the definition of disability under the Americans with Disabilities 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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 3, 2019 Idaho Administrative Bulletin, [Vol. 19-7, pages 158-159](#) and in the May 1, 2019 Idaho Administrative Bulletin, [Vol. 19-5, page 62](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Josh McKenna, UI Benefits Bureau Chief at (208) 332-3577 x 3919.

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 September 25, 2019.

Dated this 2nd day of August, 2019.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0130-1903

100. ABLE TO WORK.

“Able to work” is defined as the physical and mental ability to perform work under conditions ordinarily existing during a normal workweek. It does not mean that a person must be able to perform work in his customary occupation or the same kind of work he last performed. Ref. Sec. 72-1366(4), Idaho Code. (3-19-99)

01. Able to Perform Some Type of Work. A person must be able to perform work of some type for which he can qualify at the time he files an initial claim for unemployment insurance. ()

02. Able to Work Part-Time. A person who is able to work only part of the workday or part of the workweek is not considered “able to work” for the purposes of Section 72-1366(4), Idaho Code. This rule does not apply to claimants who establish eligibility under **Section 150 of these rules, “Claimants with Disabilities.”** ()

03. Disability Compensation. A claimant’s receipt of disability compensation does not in itself establish that he is unable to work or unavailable for work, even though the payee has been declared totally disabled. (3-19-99)

04. Illness Provision. A person who claims benefits under the illness provision must remain available for local office job referral; however, he may leave the area for treatment of his illness and continue to be eligible under the illness provision. ()

05. Illness Provision as Applied to Transitional or Reopened Claim. Receipt of benefits during the same illness continues throughout a spell of unemployment, even though the current benefit year has ended and a transitional claim is filed the following year or the claim is reopened after a period of not filing with no intervening employment. (3-19-99)

06. Mental Illness. A person who, after filing a valid claim, becomes unable to work because of mental illness is entitled to the same benefits under the illness provision as claimants who suffer from other types of illness or disability. (3-19-99)

07. Withdrawing from Labor Market Because of Illness. A claimant who withdraws from the labor market because of illness or injury prior to filing a claim is not eligible until he is able to work and available for work. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

150. CLAIMANTS WITH DISABILITIES.

An individual with a disability **under the Americans with Disabilities Act (2008)** (as defined at 29 C.F.R. Sec 1630.2(g)), **and whose disability** prevents the **claimant** from working full time or during particular shifts is not deemed unable to work or unavailable for work for so long as **the claimant** is able to perform some work and remains available for work to the full extent of his ability. ()

01. Availability Requirement. A **qualified** claimant with a disability **who is able to work with or without a reasonable accommodation** will be considered as having complied with the requirement of being available for work **provided the claimant** is willing to work the maximum number of hours **the claimant** is able to work. ()

02. Burden of Proof. Claimant has the burden of proving eligibility under this provision with competent evidence. ()

03. Additional Eligibility Requirements. Qualified claimants with disabilities must meet all other

eligibility requirements, including the illness provision of Section 100 of these rules.

()

(BREAK IN CONTINUITY OF SECTIONS)

175. AVAILABLE FOR WORK.

The phrase “available for work” is defined as a state of mind which involves a readiness and willingness to work, and a desire to find a job, including the possibility of marketing one’s services in the claimant’s area of availability. There must remain a reasonable possibility of a claimant finding and obtaining, or being referred and hired for, suitable work. Ref. Sec. 72-1366(4), Idaho Code. (3-19-99)

01. Availability Requirements. The type of work for which the claimant is available must exist in the claimant’s area to the extent that a normal unemployed person would generally find work within a reasonable period of time. (3-19-99)

02. Child Care. Child care must be arranged so as not to restrict a claimant’s availability for work or for seeking work. (3-19-99)

03. Compelling Personal Circumstances. For the purposes of this rule, compelling personal circumstances are defined as: ()

a. A situation in which the claimant required the assistance of emergency response personnel; (4-11-06)

b. The serious illness or death or funeral of an immediate family member; or (4-11-06)

c. The wedding of the claimant or an immediate family member. (4-11-06)

d. For the purposes of this rule, “immediate family member” is defined as a claimant's spouse, child, foster child, parent, brother, sister, grandparent, grandchild, or the same relation by marriage. (4-11-06)

e. For the purposes of this rule, “workweek” is defined: ()

i. Code R, U, or X. The claimant's normal work week as defined by the employer. ()

ii. Code B or C. Monday through Friday, 8 a.m.-5 p.m. ()

iii. Code D. Regular class hours. ()

f. Claimant work availability requirements are waived on Independence Day, Thanksgiving Day, Christmas Day, and New Year's Day. ()

04. Conscientious Objection. No person may be held to be unavailable for work solely because of religious convictions not permitting work on a certain day. (3-19-99)

05. Contract Obligation. A person who is bound by a contract that prevents him from accepting other employment is not eligible for benefits. (3-19-99)

06. Distance to Work. A claimant seeking work must be willing to travel the distance normally traveled by other workers in his area and occupation. (3-19-99)

07. Domestic Circumstances. A claimant is not eligible for benefits if domestic circumstances take precedence over the claimant’s availability for work or for seeking work. (3-19-99)

08. Equipment. Claimants will be required to provide necessary tools or equipment in certain occupations. The lack of these tools or equipment will directly affect a claimant’s availability for work, unless he will

accept other work. (3-19-99)

09. Evidence. A claimant is responsible for providing proof of his availability for work and for seeking work if his availability is questioned or proof is required by these rules. (3-19-99)

10. Experience or Training. A claimant is expected to be available for work consistent with his past experience or training, provided there is no change in his ability to perform that work. (3-19-99)

11. Full-Time/Part-Time Work. To be eligible for benefits, a claimant must be available for a full workweek and a full, normal workday unless the claimant establishes that a majority of the weeks worked in his base period were for less than full-time work or the claimant establishes eligibility under **Section 150 of these rules, "Claimants with Disabilities."** An individual who restricts his availability to part-time work pursuant to Section 72-1366(4)(c), Idaho Code, will be considered fully employed and ineligible to receive benefits if the individual works hours comparable to his part-time work experience in his base period. ()

12. Incarceration/Work Release. A claimant who is incarcerated for any part of the claimant's normal workweek is not eligible for benefits for that week, unless the claimant can establish he has work release privileges which would provide him a reasonable opportunity to meet his work search requirements and obtain full-time employment. (3-19-99)

13. Jury Duty/Subpoenas. A claimant serving on jury duty or subpoenaed is excused from the availability and work-seeking requirements of the law for that time period. A claimant is not ineligible if he must refuse work because of the jury duty or subpoena. (3-19-99)

14. Licensing or Government Restrictions. A claimant prohibited by law from engaging in certain work must be available for other employment to be eligible for benefits. (3-19-99)

15. Moving to Remote Area. A claimant who moves to a remote locality where there is very little possibility of obtaining work will be ineligible for benefits. (3-19-99)

16. Public Official. A public official who receives pay and performs "full-time" service is not unemployed or eligible for benefits. Part-time officials, even though receiving pay, may be considered available for work the same as any other individual employed on a part-time basis. Ref. Sec. 72-1312(1). (3-19-99)

17. Public Service. Performing public service, including voluntary non-remunerated service, does not disqualify an individual for benefits as long as he is meeting the availability and work-seeking requirements. (3-19-99)

18. Restricting Work to Within the Home. A claimant who restricts his availability to only work done within the home which severely limits the work available to him is ineligible for benefits. (3-19-99)

19. School Attendance or a Training Course. A person who is attending school or a training course may be eligible for benefits if the attendance does not conflict in any way with that person's availability for work or for seeking work and if he will discontinue attendance upon receipt of an offer of employment if there is a conflict between employment and the schooling or training. (3-19-99)

20. Temporary Absence from Local Labor Market to Seek Work. All claimants, regardless of their attachment to an industry or employer, must meet the same standard of remaining within their local labor market area during the workweek in order to be considered available for work, unless the primary purpose of a temporary absence is to seek work in another labor market; provided, however, claimants otherwise eligible to receive benefits while participating in an approved training program or course are not deemed ineligible when the training or course occurs outside of their local labor market due to the unavailability of similar programs or courses within their local labor market. ()

21. Time. (3-19-99)

a. Time Restrictions. A claimant may not impose restrictions on his time, including either hours of the

day or days of the week, which will limit his availability to seek or accept suitable work. (3-19-99)

b. Shift Restrictions. A claimant who restricts his availability to a single shift may not be fully available for work if the restriction significantly reduces his chances of becoming employed. (3-19-99)

22. Transportation Difficulties. Lack of transportation is not a bona fide reason for a claimant to fail to be available for or to seek work. Transportation is the responsibility of the claimant. (3-19-99)

23. Unreasonable Restrictions on Working Conditions. A claimant who places unreasonable restrictions on working conditions so as to seriously hinder his availability and search for work is ineligible for benefits. (3-19-99)

24. Vacation. A person on a vacation approved by his employer during time when work is available is not considered available for work nor eligible for benefits. (3-19-99)

25. Wages. A claimant is not ineligible for benefits if the wages or other conditions of available work are substantially less favorable to the claimant than those prevailing for similar work in the local area. Ref. Sec. 72-1366(7)(b), Idaho Code. (3-19-99)

a. Demanding Higher Wages. A claimant is ineligible for benefits if he unduly restricts his availability for work by insisting on a wage rate that is higher than the prevailing wage for similar work in that area. (3-19-99)

b. Prior Earnings. The claimant's prior earnings and past experience are considered in determining whether he is available for suitable work. (3-19-99)

26. Waiver of Two-Year Training Limitation. For purposes of approving a waiver of the two (2) year limitation on school or training courses, specified by Idaho Code Section 72-1366(8)(c)(ii), for claimants who lack skills to compete in the labor market, the following criteria must be met: ()

a. Financial Plan. The claimant must demonstrate a workable financial plan for completing the school or training course after his benefits have been exhausted. (3-19-99)

b. Demand for Occupation. The claimant must establish there is a demand for the occupation in which the claimant will be trained. A "demand occupation" is one in which work opportunities are available and there is not a surplus of qualified applicants. (3-19-99)

c. Duration of Training. At the time that the claimant applies for the waiver, the duration of the school or training course is no longer than two (2) years to completion. (3-19-99)

d. Denial. No claimant will be denied a waiver of the two (2) year limitation on school or training because the claimant is already enrolled or participating in the school or training at the time he requests the waiver. ()

**IDAPA 15 – OFFICE OF THE GOVERNOR
DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION**

DOCKET NO. 15-0400-1900

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[**LINK: LSO Rules Analysis Memo**](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and full force and effect upon adoption of the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-5309, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and 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 the change:

This pending rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 15.04.01, rules of the Division of Human Resources (DHR) and Personnel Commission:

IDAPA 15.04

- 15.04.01, *Rules of the Division of Human Resources and Idaho Personnel Commission*

The rule making was prompted by the expiration of the rules. The Director considered the Red Tape Reduction Act and the continued efforts to clarify and streamline its rules. Minor housekeeping edits are also intended to make the Board's rules consistent with recent statutory changes, clarify and simplify existing language, and reduce or eliminate unnecessary restrictions. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [**Vol. 19-6SE, pages 1,817-1,856**](#).

The removal of mandatory language is for the purpose of the ease of the reader of the rules and not to remove mandatory requirements in the rules.

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.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Krissy Veseth by calling (208) 854-3074.

Dated this 15th day of October, 2019.

Susan E. Buxton, Administrator
Division of Human Resources
304 N. 8th Street
P.O. Box 83720
Boise, ID, 83720-0066
Office: 208-334-2263
Fax: 208-854-3088

THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule 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 Section 67-5309, 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 15.04.01, rules of the Division of Human Resources (DHR) and Personnel Commission.

IDAPA 15.04.01

- IDAPA 15.04.01, *Rules of the Division of Human Resources and Personnel Commission* – All rules *except Sections/Subsections 007, 010.02, 010.02, 010.04, 010.07, 010.09, 010.13, 010.14, 010.16, 010.18, 010.22, 011, 011.01, 012, 012.01, 012.06, 013, 013.14, 020, 101, 101.02, 101.03, 102, 112, 141, 270, and 271.*
- DHR removed sub-parts that were duplicated in statute, not referenced, obsolete, or outdated. The chapter has been reorganized and additional technical edits were made.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule 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. Section 67-5301, Idaho Code establishes DHR and states: “The legislature declares that, in its considered judgment, the public good and the general welfare of the citizens of this state require enactment of this measure, under the powers of the state.” DHR’s rules carry out this important legislative intent.

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 Krissy Veseth by calling (208) 854-3074.

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.

<p>THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0400-1900</p>
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15.04.01 – RULES OF THE DIVISION OF HUMAN RESOURCES AND IDAHO PERSONNEL COMMISSION

000. LEGAL AUTHORITY.

The rules of the Division of Human Resources and Idaho Personnel Commission are adopted pursuant to Section 67-5309, Idaho Code. The Division has authority to determine the policies of the Idaho Personnel System and make such rules as are necessary for the administration of the Personnel System. The administrator of the Division is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of the Governor pursuant to Section 67-5308(2), Idaho Code. (3-30-01)

001. TITLE, SCOPE, AND COMPLIANCE.

01. Title. These rules are title IDAPA 15.04.01, “Rules of the Division of Human Resources and Idaho Personnel Commission.” (3-16-04)

02. Scope. These rules establish the policies and procedures of the Idaho Personnel System. (3-30-01)

03. Compliance. In accordance with the Legislature’s intent in creating the Idaho Personnel Act and for consistency in rule administration, appointing authorities shall ensure that staff with human resource management responsibilities adhere to these administrative rules. Any person willfully violating provisions of the Idaho Personnel System or the rules established in this chapter, may be subject to discipline, up to and including dismissal under Rule 190, and/or sanctions provided in Section 67-5312, Idaho Code. (3-16-04)

002. -- 005. (RESERVED)

006. WAIVER OF RULES.

The administrator reserves the right to waive any rule in specific instances when, in his/her opinion, such waivers are legal, warranted and justified in the interests of a more effective and responsive system of personnel administration. (3-30-01)

007. (RESERVED)

008. APPLICABILITY TO HEALTH DISTRICTS.

These rules apply to Public Health Districts even though specific references are to state employment. (3-16-04)

009. DUTIES OF THE ADMINISTRATOR.

In addition to other duties as assigned by law, the administrator provides administrative support to the Idaho Personnel Commission, has custody of the books and records of the Division and the Commission, and maintains a record of the proceedings before the Commission and its hearing officers. (3-16-04)

010. DEFINITION.

Each of the terms defined in these rules have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. (7-1-87)

01. Administrative Leave. Temporary paid leave from a job assignment where pay and benefits remain intact. (3-20-14)

02. Appeal. Any written request for relief from dismissal, demotion, suspension, or other adverse action filed with the Commission by an employee, appointing authority, or applicant. The meaning of appeal includes application, petition, or protest. (3-16-04)

03. Appellant. An employee, appointing authority, or applicant filing an appeal or a petition for review with the Commission. (3-16-04)

04. Appointment, Limited. The appointment of a person to a classified position where the work is projected to be of limited duration, for which the person has qualified by examination. (3-16-04)

05. Appointment, Permanent. The appointment of a person to a classified position who has been certified by the appointing authority to have successfully completed the required probationary period and whose employment is permanent, subject to removal or discipline only under the provisions of Title 67, Chapter 53, Idaho Code, and the rules of the Division and Idaho Personnel Commission. (3-16-04)

- 06. Appointment, Probationary.** The appointment of a person to a classified position for which the person has qualified by examination but is serving a work trial period as a condition for certification to permanent appointment. (4-5-85)
- 07. Appointment, Project Exempt.** The appointment of a person to a nonclassified position established under federal grants, which by law restricts employment eligibility to specific individuals or groups on the basis of non-merit selection requirements. (Ref. Section 67-5303(m), Idaho Code) (3-16-04)
- 08. Base Pay.** The rate paid for performing a job, excluding bonuses, shift differentials, overtime or other compensation premiums. (5-8-09)
- 09. Classified Service.** That body of positions in state agencies subject to Title 67, Chapter 53, Idaho Code, as defined therein and excludes temporary, project exempt, and nonclassified appointments. (5-8-09)
- 10. Compensation Plan.** The overall system of salary administration for classified service including Sections 67-5309B and 67-5309C, Idaho Code; the classification and compensation schedules, Division and Idaho Personnel Commission rules and policies, and agency policies governing employee pay. (5-8-09)
- 11. Compensation Schedule.** The pay grades established by the Division and associated rates of pay. (Ref. Section 67-5309B, Idaho Code) (5-8-09)
- 12. Consultant.** An independent contractor who provides professional or technical advice, counsel, or service. (Ref. Rule 050) (5-8-09)
- 13. Dismissal.** The separation of an employee from classified service with cause assigned by the appointing authority pursuant to Rule 190. (5-8-09)
- 14. Division.** The Idaho Division of Human Resources. ()
- 15. Due Process.** As related to Idaho's Personnel System for permanent classified employees, the activities required to address an individual's constitutional right to notice and an opportunity to be heard. (Ref. Section 67-5315, Idaho Code) (3-16-04)
- 16. Employment History.** The information available to the public without the employee's consent in accordance with Section 74-106, Idaho Code, for every agency for which a current or former public official works, including the official reasons for separation from employment but not including accrued leave balances or usage. (5-8-09)
- 17. Good Cause.** The conduct of a reasonable person in the same or similar circumstances. (7-1-87)
- 18. Hay Method.** A methodology for establishing the relative value of jobs and used as a dimension of the pay system. (5-8-09)
- 19. Hiring List.** A hiring list is a subset of a register consisting of the top twenty-five (25) individuals on the register, plus all individuals tied for the twenty-fifth position, certified as eligible for a specific recruitment. Candidates for reinstatement or transfer may be considered and are provided in addition to the top twenty-five (25). (4-7-11)
- 20. Incumbent.** Any person holding a classified or non-classified position in state service. (7-1-87)
- 21. Independent Contractor.** Any person, firm, or corporation meeting the Internal Revenue Service's test for an independent contractor or a self-employed person. (Ref. Rule 050) (5-8-09)
- 22. Involuntary Transfer.** A significant change in work location, shift and/or organizational unit made as a result of a management decision as opposed to an employee's request or agreement to transfer. (3-30-01)

- 23. Layoff.** An involuntary reduction in hours of work or separation of an incumbent in the classified service either by reduction in force due to shortage of work or funds, or abolishment of positions. (4-5-85)
- 24. Light or Limited Duty.** A general term describing a temporary limited assignment in relation to recovery from injury, illness or other limiting condition as approved by the appointing authority. (3-16-04)
- 25. Merit Increase.** The advancement of an employee's compensation within a pay grade based upon performance in accordance with Section 67-5309B(3) and (4), Idaho Code. (3-20-14)
- 26. Merit Increase Matrix.** A pay distribution tool used to advance employee pay based on performance and market data. (5-8-09)
- 27. Minimum Qualification Specialty.** A minimum qualification required for one (1) or more positions in a classification that is in addition to the other minimum qualifications required for all positions in the classification. (3-16-04)
- 28. Occasional or Sporadic Work.** Work that is voluntarily performed by an employee in a different capacity from the employee's regular work and is infrequent, irregular or occurring in scattered instances. (7-1-87)
- 29. On-Call Time.** Time when an employee is required to carry a pager, cellular phone, or to leave work at home or with the agency where the employee may be reached if needed to work, and the employee can use the time effectively for personal purposes. (5-8-09)
- 30. Pay Line Exception.** A temporary assignment of pay grade, pursuant to Section 67-5309D, Idaho Code, in excess of the pay grade allocated pursuant to Section 67-5309B, Idaho Code, as approved by the administrator. (5-8-09)
- 31. Permanent Employee.** An employee in the classified service who has successfully completed entrance probation. Permanent employees remain subject to separation as set forth in these rules and Section 67-5309(n), Idaho Code. (5-8-09)
- 32. Promotion.** The advancement through the competitive process of an employee with permanent status from a position which he occupies in one (1) classification to a position in another classification having a higher paygrade. (5-8-09)
- 33. Reduction in Pay.** A reduction of an employee's salary from one (1) pay rate to a lower rate within the pay grade to which the employee's classification is allocated. (3-16-04)
- 34. Register.** A list of names of persons or the name of one (1) person who has been determined to be eligible for employment in a classification on the basis of examination and merit factors as established by the administrator. An adequate register lists at least five (5) names of eligible candidates currently available for consideration for each vacancy in the classification for which the register was established. (3-16-04)
- 35. Resignation.** The voluntary quitting or abandonment of state employment, excluding retirement. (5-8-09)
- 36. Respondent.** The party whose interests are adverse to those of the appellant. (7-1-93)
- 37. Salary Equity Increase.** The advancement of an employee's compensation within a pay grade based upon factors such as market demand, compression within the agency or classification, or inequities, and the employee's performance, in accordance with Section 67-5309B(3), Idaho Code. (3-20-14)
- 38. Suspension.** An enforced period of absence, with or without pay, for disciplinary purposes, for felony charges, or pending investigation of charges made against an employee pursuant to Rule 190. (5-8-09)
- 39. Termination.** The separation of an entrance or voluntary probationary employee from classified service for unsatisfactory service during the probationary period without cause assigned by the appointing authority

pursuant to Rule 152.

(5-8-09)

40. Transfer. A change of work location of an employee in which the employee changes from one (1) position to another in the same classification or to another classification in the same pay grade. (3-16-04)

41. Underfill. Appointment to a position established at a higher classification while being compensated at a lower pay grade during completion of a training plan. Underfills must be approved in advance by the administrator. (3-20-14)

42. USERRA. Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. Sections 4301 through 4333. Prohibits employment discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. (5-8-09)

43. Workweek. A period of seven (7) consecutive days beginning 12:01 a.m. Sunday. (Ref. Rule 073) (12-10-90)

011. -- 019. (RESERVED)

020. BASIC MERIT REQUIREMENTS OF THE PERSONNEL SYSTEM.

All appointments, promotions and separations in the classified service shall be based on competence, valid job requirements, and individual performance. (3-30-01)

021. DISCRIMINATION PROHIBITED.

No person shall be discriminated against in regards to appointments, promotions, demotions, separations, transfers, compensation, or other terms, conditions, or privileges of employment because of race, national origin, color, sex, age, religion, disability, or veteran status (unless under other than honorable conditions). (3-30-01)

022. PROHIBITED QUESTIONS.

All questions on applications and examinations shall be based on valid job requirements. Questions that impermissibly discriminate on the basis of race, national origin, color, sex, age, religion, disability, political affiliation, or veteran status are prohibited. Questions regarding veteran status for compliance with veterans' preference are permitted. (3-16-04)

023. BONA FIDE OCCUPATIONAL QUALIFICATION.

Qualification requirements based on age or gender may be established as necessary for specific positions by the Administrator of the Division. (3-30-01)

024. CONFLICT OF INTEREST AND PERSONAL CONDUCT.

The maintenance of a high standard of honesty, ethics, impartiality, and conduct by state employees is essential to ensure proper performance of state business and strengthen the faith and confidence of the people of Idaho in the integrity of state government and state employees. All appointing authorities shall establish such policies and standards necessary to prevent conflicts of interest. (5-8-09)

025. NEPOTISM.

No employee shall work under the immediate supervision of a supervisor who is a spouse, child, parent, brother, sister or the same relation by marriage. (8-1-81)

026. DUAL EMPLOYMENT.

There will be no conflicting hours of work when a classified employee is employed by more than one (1) state agency. The employee must obtain approval from all appointing authorities concerned prior to beginning dual employment. (5-8-09)

027. -- 039. (RESERVED)

040. NONCLASSIFIED EMPLOYEES SUBJECT TO CLASSIFIED SERVICE SUBSEQUENT TO APRIL 5, 1985.

The provisions of this rule apply to all employees exempt from classified service who, subsequent to April 5, 1985,

become subject to the provisions of Chapter 53, Title 67, Idaho Code. (3-30-01)

01. Probationary Period. A nonclassified employee brought under classified service under Rule 040 must serve a probationary period appropriate for the classification assigned to the employee's position. Service uninterrupted by resignation, termination, or dismissal immediately prior to inclusion in classified service shall be considered as probationary service. (3-16-04)

02. Certification to Permanent Status. An employee who has completed a probationary period as required above and who is certified in writing by the appointing authority as serving satisfactorily shall be certified to permanent status without examination. (3-30-01)

03. Examination. An employee who has not completed a classified entrance probationary period as required shall be required to meet the minimum qualifications by passing an examination for the classification assigned to the employee's position. The employee will be hired from a hiring list and serve a period of entrance probation. (3-28-18)

04. Separation. An employee who is not certified by the appointing authority as serving satisfactorily shall be separated from state service no later than thirty (30) calendar days after inclusion in classified service. An employee who fails to pass the examination or had an opportunity to have such examination and not availed himself or herself thereof shall be separated no later than thirty (30) calendar days after the establishment of an adequate register of eligibles. (3-30-01)

05. Salary Protection. If the salary of an employee, brought under classified service under Rule 040, is greater than the highest rate of the pay grade of the classification to which assigned, the employee's salary shall be protected; to the maximum of their new paygrade. (3-16-04)

041. -- 049. (RESERVED)

050. CONSULTANTS AND PERSONS EMPLOYED UNDER INDEPENDENT CONTRACT.

Nothing in these rules prohibits the use of independent contractors or consultants for legal, medical, technical, or other professional services, provided that they are not engaged in the performance of administrative duties for any state agency. No position in the state classified service will be filled by a consultant or independent contractor. (5-8-09)

01. Limited Use Only. Individuals employed through contracts with temporary services or professional staffing agencies will be utilized only for short-term situations. (3-30-01)

02. Conflict of Interest/Nepotism. Agency policies regarding conflict of interest/nepotism should address the award of work to consultants and contractors. (See Rules 024 and 025 and Ref. Section 18-1359, Idaho Code.) (3-16-04)

03. Not to Be Treated as Employees. Independent contractors, their staff or consultants must not be treated as employees. Appointing authorities must comply with current Internal Revenue Service guidance on independent contractor and employee definitions. (3-16-04)

051. -- 059. (RESERVED)

060. ADOPTION OF CLASSIFICATION SCHEDULE.

The Division will develop, adopt, and make effective a classification schedule consisting of classification specifications allocated to various pay grades in the compensation schedule for all positions based on an analysis of the duties and responsibilities of representative positions. ()

061. ANALYSIS OF CLASSIFICATIONS.

The Division will assist appointing authorities in the analysis of positions in determining proper classification and, at the determination of the administrator, will conduct independent classification reviews of the various agencies. (5-8-09)

062. AUTHORITY.

The administrator has the responsibility and authority to classify positions in the classification schedule. (3-30-01)

063. REVIEW OF CLASSIFICATION SCHEDULE.

The administrator will ensure the appropriateness and accuracy of classification specifications. ()

064. AMENDMENT OF CLASSIFICATION SCHEDULE.

01. Changes To Classifications. Whenever it is necessary to establish or delete a classified position or to revise a position's responsibilities, the appointing authority will submit proposed changes to the administrator. (3-30-01)

02. Approval. Each appointing authority, prior to establishing any new position within the agency, will obtain the approval of the administrator for the classification of such positions and their assignment to a pay grade in the compensation schedule. Approval by the administrator of the Division of Financial Management for sufficiency of funds is also required. (5-8-09)

03. Assignment to Pay Grade Required. No person will be appointed to, employed in, or paid for services in any classified position until the position has been established, classified, and assigned to a pay grade in accordance with these rules. (3-30-01)

065. APPROVAL OF NEW, REVISED AND DELETED CLASSIFICATIONS.

01. New and Refactored Classifications. New classifications of work and revised classifications require approval by both the administrator and the Division of Financial Management administrator when there is a fiscal impact. (3-16-04)

02. Revised and Deleted Classifications. Revised classifications with no fiscal impact and classifications deleted from the classification schedule require approval only of the administrator. (3-16-04)

066. ABOLISHMENT OF POSITIONS.

An appointing authority may abolish a position for reasons of administrative efficiency. Employees to be separated as a result shall have layoff and reemployment preference in accordance with Rules 140 through 147. (7-1-87)

067. RECLASSIFICATION OF POSITIONS.

01. Procedure. Positions may be reclassified in the same pay grade, upward, or downward as determined by an analysis by the Division of the duties and responsibilities assigned by appointing authorities to specific positions. An incumbent occupying a reclassified position shall be properly classified by an appointing authority within thirty (30) calendar days of being notified by the administrator that the duties and responsibilities assigned to the position are not properly classified. (3-20-14)

02. Effective Date. Reclassifications of positions are not effective until they are approved by the administrator, but may be retroactive to the beginning of the pay period during which approval is granted. Reclassification of an employee may not precede the effective date of the reclassification of the position. (3-30-01)

068. VIOLATIONS.

Accurate position classification is the foundation for providing equal pay for equal work, identification of actual work performed, fair employment and equal opportunity for promotions, and equitable compensation. Upon the administrator's determination that classification rules have been violated, the appointing authority will be informed and provided thirty (30) days to take actions necessary to correct the situation or submit a corrective action plan to the administrator. If these actions do not occur, the administrator will inform the employee, the appointing authority, and the state controller that the employee is being compensated in violation of these rules. (Ref. Sections 67-5308 and 67-5312, Idaho Code) (3-16-04)

069. (RESERVED)

070. COMPENSATION OF EMPLOYEES.

01. Assignment to Pay Grade. As a basis for pay equity, the Division will use a combination of point factoring and market data to determine the relative value of each classification. (Ref. Rule 074.01 and Section 67-5309B, Idaho Code) (5-8-09)

02. Factoring. The Division will use the Hay method to determine the relative value of each classification, and as a basis for internal pay equity. (Ref. Section 67-5309B, Idaho Code) (5-8-09)

03. Salary Surveys. The Division will conduct or approve salary surveys, to determine salary ranges that represent labor market average rates for Hay point factored positions in classified service. (3-16-04)

04. Relevant Labor Markets. Labor markets used for wage comparison will be based on recruiting markets for specific job classifications. Consultation with various appointing authorities will also contribute to labor market determination. (5-8-09)

a. When the competition for employees is the local area market, the comparison will be made from a survey representing public and private employers in the state of Idaho. (3-16-04)

b. For classifications with a regional recruiting area, the comparator market will be from public and private employers from the neighboring states and Idaho. For those with no private counterparts, the comparator market will be state governments, including, but not limited to, Arizona, Colorado, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. (5-8-09)

c. Recruitment and retention issues will be used to determine the need for additional special market surveys. (3-16-04)

05. Compensation Schedule. Significant changes to components of the compensation plan will be presented in a public meeting after notice. (5-8-09)

071. MERIT INCREASE MATRIX.

Salary increases must be based on a merit increase matrix approved by the Division. Shift and geographic premium pay, bonuses, reinstatements, transfers, promotions, salary equity increases, and recruitment and retention awards are not subject to a matrix. (3-20-14)

072. OPERATION OF COMPENSATION PLAN.

01. Authorized Pay Rate. No employee in the state classified service will be paid at a rate less than the minimum nor greater than the maximum rate of the pay grade assigned to the classification. (5-8-09)

02. Starting Salary. The starting salary for a new appointee may be anywhere within the pay grade assigned to the employee's classification and is at the appointing authority's discretion considering available budget, market, and relation to existing staff salaries. (5-8-09)

03. Payline Exceptions. Temporary assignments to a new pay grade may be made by the administrator. Such assignments apply to an entire classification for the purpose of recruitment or retention and will be reviewed annually to determine the need for continuance. (5-8-09)

04. Salary Equity Increases. An appointing authority may, with approval by the administrator, advance an employee's salary within a pay grade based upon factors such as market demand, to address compression within an agency or classification, or inequities. In accordance with Section 67-5309B(3), Idaho Code, the employee's performance must be considered. (3-20-14)

05. Salary After Reappointment from Layoff. Employees appointed by the agency that laid them off (Ref. Rules 101.01 and 146) will be paid in the current pay grade for the classification to which reappointed or at the same payrate the employee received immediately preceding layoff, whichever is greater, but not to exceed the maximum of the current pay grade. (5-8-09)

06. Salary Upon Transfer. (7-10-88)

a. A transfer between agencies (Ref. Rule 125) in the same classification or one of equal pay grade does not require a change in the employee's salary, but a lower or higher rate may be negotiated between the employee and the appointing authority. (5-8-09)

b. If the transfer is to a classification of lower pay grade (demotion), the employee's salary is negotiable between the employee and appointing authority within the lower pay grade. (3-16-04)

07. Salary Upon Reinstatement. Unless related to reemployment after a lay off, the salary of a reinstated employee (Ref. Rule 124) is negotiable between the employee and appointing authority in the current pay grade for the classification in which the employee has reinstatement privileges. (5-8-09)

08. Salary Upon Downward Reassignment. When a classification is reassigned downward the employee's salary will be protected to the maximum within the new pay grade. (3-16-04)

09. Salary Upon Return from Military Duty. An employee who returns to state service from active military duty in accordance with the provisions of Section 65-508, Idaho Code, and USERRA will be paid at the comparable rate in the current pay grade for the classification to which he was assigned prior to leaving for military service. (5-8-09)

073. CALCULATION OF PAY.

01. Standard Calculation of Pay. For other than police, correctional officers, or fire employees, pay is calculated in the following order: (5-8-09)

- a.** Holiday pay; (12-10-90)
- b.** All hours worked on a holiday as overtime; (12-10-90)
- c.** All hours worked over forty (40) in the workweek as overtime, excluding occasional or sporadic work; (4-7-11)
- d.** Vacation, sick and other paid or unpaid leaves; and (12-10-90)
- e.** All remaining hours worked at the employee's regular rate of pay. (5-8-09)

02. Shift Differential. Additional compensation paid to employees (including temporary or part-time employees) who work specific, designated hours. Shift differential is paid in addition to any other compensation. (Ref. Sections 67-5302(20) and 67-5328, Idaho Code; Shift differential may be awarded in amounts up to and including twenty-five percent (25%) of hourly rates, based on local market practice for similar jobs. (Ref. Section 67-5309(u), Idaho Code. (5-8-09)

03. Calculation of Pay for Police, Correctional Officers, and Fire Employees. Police, correctional officers, and fire employees on a twenty-eight (28) day work schedule will be compensated as described in Rules 073.01 and 073.02, except that overtime will be calculated based on one hundred sixty (160) hours in a twenty eight (28) day period instead of forty (40) hours in a workweek. (5-8-09)

04. Holiday Pay Calculation. (7-1-87)

a. Paid time off for holidays is a benefit and must be allocated in a substantially similar manner to all employees in the same classification. (5-8-09)

b. A full-time employee will receive holiday pay in accordance with the number of hours the employee works on a regular workday. If the employee's schedule is so irregular that a regular workday cannot be determined, the employee will receive eight (8) hours of holiday pay. An employee must receive some paid leave,

wages or salary for the pay period in which the holiday occurs to receive the holiday benefit. (3-16-04)

c. A part-time employee who has a regular work schedule shall be paid for a holiday in the same ratio as eight (8) hours is to a forty (40) hour work week, which for calculation purposes converts to two tenths (.20) x hours normally worked. (3-16-04)

d. To avoid inequities with regard to the Family Medical Leave Act (FMLA) during holiday weeks, if an employee is recording all hours for the week as Family Medical "Leave Without Pay," no hours will be coded on the holiday. Therefore, the holiday will not be counted toward the twelve (12) weeks of family medical leave. (5-8-09)

e. If a part-time employee's hourly schedule is so irregular that a normal workweek cannot be determined, the holiday benefit is in the same proportion that the hours the employee works during a week in which a holiday occurs relate to forty (40). (3-16-04)

f. Schedules resulting in holiday time off in excess of eight (8) hours may be approved by the appointing authority if included in the agency compensation plan. Appointing authorities may also suspend flex schedules during holiday weeks or otherwise adjust work schedules to ensure internal consistency. (5-8-09)

05. Reduction of Salary. The salary of an employee receiving more than the lowest rate of the pay grade for his classification may be reduced to a lower rate within the pay grade by the appointing authority for disciplinary reasons enumerated in Rule 190. (5-8-09)

06. Salary Administration. Each agency must develop a compensation plan designed to consider recruitment and retention and ensure pay equity within the organization. (Ref. Section 67-5309B, Idaho Code) (5-8-09)

07. Salaries for Temporary Appointments. Except as provided for in these rules, salaries for employees hired under temporary and project-exempt appointments will be governed by Section 59-1603, Idaho Code. (5-8-09)

074. ASSIGNMENT OF HAY EVALUATION POINTS.

01. Assignment to Pay Grade. Pursuant to Sections 67-5309B and C, Idaho Code, the pay grade to which a classification is assigned shall be determined by the number of Hay evaluation points assigned to each classification. (3-16-04)

02. Guide Charts. The Hay evaluation points assigned to a classification shall be the composite numerical value of points factored from the Hay guide charts. (3-16-04)

03. Factoring Benchmarks. The established factoring benchmarks shall be used in conjunction with the Hay Guide Charts to determine the number of points assigned to a classification. (3-28-18)

04. Factoring Process. Hay evaluation points shall be assigned to a classification through the following methods, which may be used separately or in combination with the others: (3-16-04)

a. Factoring Session. The administrator shall determine the membership of a factoring committee and schedule a factoring session in which the appointing authority or designee may present both oral and written information concerning the classification to be factored. The factoring committee shall assign Hay evaluation points in accordance with Rule 074 and the administrator shall notify the appointing authority in writing of the decision of the factoring committee. The appointing authority may request an issue conference with the factoring committee and present their perspective on the assigned points. The factoring committee may affirm or modify the assigned points. The administrator will provide a letter to the appointing authority stating the outcome of the issue conference. (3-16-04)

05. Approval. After consultation with the administrator of the Division of Financial Management for approval regarding potential fiscal impacts, the administrator of the Division has final approval of the Hay evaluation

points assigned to each classification. These points are final unless appealed in accordance with Section 67-5316, Idaho Code. (3-16-04)

075. BONUSES.

01. Performance Bonuses. Up to a total of two thousand dollars (\$2,000) may be awarded each fiscal year, in recognition of exemplary performance. In extraordinary circumstances exceptions to the two thousand dollar (\$2,000) limit may be granted if approved in advance by the State Board of Examiners. Documentation of the exemplary performance and related bonus award must be provided to the employee and placed in the employee's agency personnel file. (Ref. Sections 59-1603(7) and 67-5309D(1), Idaho Code) (5-8-09)

02. Employee Suggestion Award. Appointing authorities may award up to a total of twenty-five percent (25%) of the savings realized from an employee's idea to save taxpayer dollars, not to exceed two thousand dollars (\$2,000). (Ref. Section 67-5309D, Idaho Code) (5-8-09)

a. Suggestions need to increase productivity, conserve state resources, reduce state costs, or improve the morale of state employees. ()

b. Suggestions that may deserve an award larger than two thousand dollars (\$2,000) and suggestions aimed at saving money outside the employee's state agency should be submitted through the employee's agency first, then submitted to the Division. Awards greater than two thousand dollars (\$2,000) must be approved in advance by the State Board of Examiners. ()

c. Employee suggestion awards may be funded from the expense category (personnel, operating, or capital) from which the savings were realized. (5-8-09)

076. -- 079. (RESERVED)

080. RECRUITMENT.

The administrator will cooperate with the appointing authority of each agency in the operation of a coordinated recruiting program. (3-28-18)

081. PURPOSE OF EXAMINATIONS.

The administrator shall conduct examinations for the purpose of maintaining eligibility registers. (8-1-81)

082. METHODS OF RECRUITMENT.

For the purpose of establishing eligibility registers, there are three (3) methods of recruitment: open competitive, agency promotional, or statewide promotional. The scope of advertising and outreach for each approach will vary with agency preference, needs, and labor market strategies. (5-8-09)

083. MOVING EXPENSE REIMBURSEMENT.

01. Reimbursement Limitations. The appointing authority may reimburse moving expenses for current or newly hired state employees in an amount less than or equal to ten percent (10%) of the employee's base salary or fifteen thousand dollars (\$15,000), whichever is less. Moving expense reimbursements must comply with the State Board of Examiners' State Moving Policy and Procedures that are in effect at the time the move takes place. (5-8-09)

02. Exceptions to Reimbursement Limitations. Exceptions to the expense reimbursement limits set forth in Rule 083.01 may be granted if approved in advance by the appointing authority. (5-8-09)

084. ANNOUNCEMENT OF RECRUITMENT.

01. Distribution of Announcements. The announcement of each open-competitive recruitment will be supplied to the appropriate local offices of the Idaho Department of Labor and to other locations determined necessary by the administrator to develop a register of eligibles. If the open competitive recruitment has been requested by the appointing authority in lieu of a promotional recruitment, it will be his responsibility to post or

otherwise distribute the announcement so it can be seen by all employees of that agency prior to its expiration date. (Ref. Rule 169) (5-8-09)

02. Posting of Promotional Announcements. The announcement for each promotional recruitment will be supplied to the appointing authority of each affected agency. It will be his responsibility to post, electronically communicate, or otherwise distribute such announcement so it can be seen by all employees in the agency prior to the expiration date. (5-8-09)

085. CONTENT OF ANNOUNCEMENTS.

Each announcement shall contain the title of the classification, characteristic duties and responsibilities, salary, minimum qualifications, nature of examination, qualifying score, closing date, equal opportunity and veterans preference notice, and other pertinent information. (3-16-04)

086. APPLICATIONS.

01. Form. All applications must be filed in the form approved by the administrator. (5-8-09)

02. Filing of Applications. Applications are currently accepted by Internet application system. (3-29-17)

03. Application by Military Personnel. An application will be accepted after the closing date of the announcement from a person who was serving in the armed forces, or undergoing service-connected hospitalization of no more than one (1) year following discharge, during any period in which the announcement was open. The application must be submitted within one hundred twenty (120) days of the applicant's separation from the armed forces or hospitalization and prior to the expiration of the register established as a result of an examination. (Ref. Sections 65-503 and 67-5309(f), Idaho Code) (5-8-09)

04. Application by Disabled Veterans. A disabled veteran may file an application at any time up until a selection for any classification for which the Division maintains a register as a source for future job openings or for which a register is about to be established, provided the veteran has not already been examined twice for the same classification, does not have current eligibility on that register, or is not serving in a competitive position in the same pay grade as the classification for which application is made. (Ref. Sections 65-503 and 67-5309(f), Idaho Code) (5-8-09)

05. Promotion of Entrance Probationary Employee. Any classified employee on entrance probation may file an application for a promotional opportunity but is ineligible to be certified to a department or statewide promotional hiring list until permanent status has been attained. (Ref. Rule 169.03.) (3-29-17)

06. Disclosure of Information for Hiring Purposes. By submitting an application, an individual is deemed to authorize disclosure of confidential information to state agencies for purposes of screening, testing, interviewing and hiring. (Ref. Section 74-106, Idaho Code). (12-10-90)

087. DENIAL OF APPLICATIONS.

01. Basis. The administrator may choose not to process an application if: (3-16-04)

a. The applicant will not meet the minimum qualifications specified in the announcement at the time set for appointment. (3-30-01)

b. The application was not received on or before the closing date for acceptance of applications. (3-30-01)

c. A background investigation or examination of an applicant discloses that the applicant committed an act which is cause for dismissal as provided in Rule 190. (3-30-01)

02. Further Actions. When any such finding under Rule 087.01 is made, the administrator may deny the application and may cancel the eligibility of the applicant if he or she has already attained a place on the eligibility

register. If the applicant has already received appointment, the administrator may take appropriate action to have the employee removed from the position. (3-30-01)

088. -- 089. (RESERVED)

090. EXAMINATIONS.

Examinations shall be designed to evaluate factors pertinent to an individual's ability to perform competently the duties of the classification. The factors tested shall be job-related and may include, but are not limited to, education and experience, knowledge, skills, abilities, aptitude, and physical ability. (3-30-01)

091. PROHIBITED FACTORS.

No part of any examination may include any question designed to reveal prohibited information including the political or religious affiliation or belief, national origin or race of any candidate. (3-30-01)

092. PREPARATION OF EXAMINATIONS.

01. Content of Examinations. Examinations may include any questions, tests or criteria designed to evaluate the suitability of applicants for job openings within a classification. So far as is practical, promotional examinations will be similar to corresponding open-competitive examinations and the same standards will be applied in determining scores. (3-30-01)

02. Job Analysis and Confidentiality. Contents of each examination will be determined by the Division on the basis of appropriate professional techniques and procedures of job analysis and test development. No information concerning the specific content of the examination will be divulged to unauthorized personnel by the Division or other personnel who have access to the examinations. (5-8-09)

03. Subject-Matter Experts. The Division may, at its discretion, collaborate with appointing authorities, incumbents, subject-matter experts, or other qualified persons in the preparation of examinations. (5-8-09)

093. CONDUCT AND RATING OF EXAMINATIONS INCLUDING VETERANS' PREFERENCE POINTS.

01. Designation of Examiners. The examinations will be conducted and rated by persons designated by the administrator. (8-1-81)

02. Scoring of Examinations. Each examination will be rated for final scores on the basis of one hundred (100) point maximum. The Division will use appropriate statistical and professional techniques and procedures in determining passing points and final scores. (5-8-09)

03. Veterans Preference. (3-16-04)

a. Veterans and disabled veterans points, when applicable under state law, will be added to the final score achieved in the examinations, notwithstanding the fact that the augmented final score may exceed one hundred (100) points. Five (5) percentage points will be added to the earned rating of any veteran, as defined in Section 65-502, Idaho Code, and the widow or widower of any veteran, as defined in Section 65-502, Idaho Code, as long as the widow or widower remains unmarried. Pursuant to Section 65-504, Idaho Code, ten (10) percentage points will be added to the earned rating of any disabled veteran, as defined in Section 65-502, Idaho Code, or to the unmarried widow or widower of the same, or the spouse of any eligible disabled veteran who cannot qualify for any public employment because of a service-connected disability. Employment registers will be established in order of final score except that the names of all five (5) and ten (10) percentage point preference eligibles resulting from the merit system will be placed on the register in accordance with their augmented rating. (Ref. Sections 65-506 and 67-5309(f), Idaho Code) (5-8-09)

b. Veterans and disabled veterans preference points must not be used to achieve a passing score. (5-8-09)

04. Failing Score. Failure in any part of the examination may disqualify the applicant in the entire examination and from having his name placed on the register. Final scores will be computed in accordance with weights assigned the individual factors in the total examination. (5-8-09)

05. Waiver of Examination. Notwithstanding other provisions in these rules, when ten (10) or fewer applications are received from applicants meeting minimum qualifications for a position announcement and there is no existing register, the announced examination may be waived by the administrator. These applicants will be eligible for appointment and their placement on the register will take into account veterans' preference. When using registers developed in this manner, appointing authorities will provide the opportunity for placement interviews for each applicant on the register. (3-16-04)

06. Examination Upon Reclassification. An employee occupying a position which is reclassified (Ref. Rule 067.01) may be required at the discretion of the administrator to pass an examination for the classification to which reclassified. (5-8-09)

094. ELIMINATION TESTS.

Wherever it is stated in the announcement that an applicant must qualify in a series of different tests or satisfy other requirements to become eligible for appointment, and the applicant fails to meet such requirements, he or she shall not be permitted to take any further tests in the examination, and such tests if previously given need not be rated. (4-5-85)

095. NOTICE AND RECORD OF RESULTS OF EXAMINATION.

All competitors shall be notified of their final scores electronically or by mail. The records of scores are held as official records for the life of the resulting eligibility registers. (3-16-04)

096. REVIEW AND APPEAL.

01. Review of Examination Content and Scoring Material. Any competitor, or his/her representative authorized in writing, shall be permitted to inspect his/her own papers and records, except examination content and scoring material, upon application in person at the office of the Division in Boise during business hours. Alternative arrangements are available for competitors located outside of Boise. Review is limited to the time allowed for appeal of examination scores. (3-16-04)

02. Appeal of Examination Score. Any competitor, by written request to the administrator, may appeal his or her examination score within thirty-five (35) calendar days after the notice was sent to such competitor. The administrator will review the test, may change the score, and may take any other action necessary to insure the integrity and quality of the testing process. When such review discloses error affecting the scores of other competitors, the review and adjustment includes their scores. The administrator will provide a written explanation to competitors whose scores are affected by the action taken. (3-16-04)

097. ALTERNATIVE EXAMINATION PROCESS FOR PERSONS WITH DISABILITIES.

01. Conditions for Eligibility. Notwithstanding other provisions in these rules, an agency may appoint an individual directly into entrance or promotional probationary status in a classification if the Division of Vocational Rehabilitation, the Idaho Commission for the Blind, or the Industrial Commission certifies the following: (3-16-04)

a. That the individual has a physical or mental impairment that substantially limits one (1) or more major life activities, as further defined under state or federal law; (3-30-01)

b. That the individual meets the minimum qualifications of the classification and is qualified to perform the essential functions of a particular classified position with or without reasonable accommodation; and (3-16-04)

c. That the individual lacks competitiveness in the examination process due to the disability. (Ref. Section 67-5309(e), Idaho Code.) (3-16-04)

02. Concurrence Required. The certification shall be made with the concurrence of the Division.

(3-30-01)

03. Probationary Period. The probationary period shall be the sole examination for individuals certified under this alternative examination process. (Ref. Rule 150). (5-8-09)

098. -- 100. (RESERVED)

101. ELIGIBILITY REGISTERS.

Eligibility registers are established by the Division to provide for fair and impartial selection for entrance into the state classified service and for promotion on the basis of competitive merit examinations. (5-8-09)

01. Reemployment Preference Registers. Registers with reemployment preference for a given classification will contain the names of classified employees of permanent status who have been laid off except limited service appointments. (Ref. Rules 140 and 144). (3-20-14)

02. Open Competitive Registers. Open competitive registers for a given classification will contain the names of applicants who successfully passed an open competitive examination for the classification. (5-8-09)

102. PLACEMENT ON REGISTER.

01. Score Order. Eligible candidates will be placed on the register for a given classification ranked in descending numerical order based on their final score on the examination for such classification. (5-8-09)

02. Veterans' Preference. Eligible veterans or surviving spouses entitled to five (5) point preference will be placed on the open competitive register in accordance with their final score on the examination augmented by preference points. (Ref. Rule 093.03 and Section 65-504, Idaho Code) (5-8-09)

03. Disabled Veterans' Preference. Preference will be awarded to disabled veterans as follows: (3-20-14)

a. Disabled veterans, Purple Heart recipients, spouses of any eligible disabled veterans who cannot qualify for any public employment because of a service-connected disability, and unmarried widows or widowers of disabled veterans entitled to ten (10) point preference will be placed on the open-competitive register in order of their final score on the examination augmented by preference points. (Ref. Rule 093.03 and Sections 65-503 and 65-504, Idaho Code) (3-20-14)

b. Disabled veterans who have a current service-connected disability of thirty percent (30%) or more will be offered an interview when their final score on the hiring list places them within the top twenty-five (25) qualified candidates. If more than ten (10) disabled veterans with a disability rating of thirty percent (30%) or more place in the top twenty-five (25) qualified scores of a hiring list, at least ten (10) will be offered an interview. (Ref. Rule 093.03 and Section 65-504, Idaho Code) (3-20-14)

103. DURATION OF ELIGIBILITY REGISTERS.

01. Reemployment Preference Registers. Eligible candidates will remain thereon for twelve (12) months from effective date of layoff. (Ref. Rules 101.01 and 144) (3-16-04)

02. Other Registers. The duration of all other registers will be determined by the administrator based on the frequency of job openings and agency need. (3-16-04)

104. REMOVAL OF NAMES.

01. Reasons Specified. Names may be removed from any eligibility register by the administrator because of: (5-8-09)

a. Appointment of the eligible candidate from the register to the classification or appointment to a classification in a higher pay grade. (3-16-04)

b. A statement by the eligible candidate that he is not willing to accept appointment under conditions previously specified. (5-8-09)

c. Physical, mental or other disability where it has been demonstrated that the disability will prevent the eligible candidate from satisfactorily performing the essential functions of the position with reasonable accommodation for the disability. (3-16-04)

d. Failure of an eligible candidate to respond within seven (7) calendar days to documented good faith inquiry concerning availability for employment. (3-16-04)

e. The eligible candidate's conduct renders him unsuitable for the position or classification for which he applied. (5-8-09)

f. Written rejection of the eligible candidate for good cause by an appointing authority as approved by the administrator. (3-30-01)

g. Conviction of an eligible candidate of any felony. (3-30-01)

h. False statements of material facts given in the eligible candidate's application for employment or any subsequent examinations or interviews. (3-30-01)

i. Dismissal of an eligible candidate from state service. (3-30-01)

j. Paying, promising to pay, or giving any money, thing, service or consideration to any person, directly or indirectly, for any service or influence given, used, or promised towards securing appointment. (3-16-04)

k. Directly or indirectly obtaining information regarding examinations to which, as an applicant, he is not entitled. (5-8-09)

l. Refusing an interview or refusing to accept a position under the conditions set forth in the recruitment announcement. (3-16-04)

m. Having been certified for a probationary appointment for three (3) separate positions in the same classification in the same agency and not been accepted for employment for good cause. (5-8-09)

n. Declining three (3) separate offers of employment or reemployment without good cause. (3-16-04)

02. Limitations and Duration of Removal. The administrator will determine if the candidate will be removed from all registers, registers for a particular classification, or registers for specified agencies. All removals will be for one (1) year unless otherwise authorized by the administrator. (3-16-04)

105. TEMPORARY UNAVAILABILITY NOT REASON FOR REMOVAL.

Temporary unavailability of an eligible applicant, not to exceed fifteen (15) calendar days, in order that the employee may give his or her employer advance notice of separation is not proper cause for his or her removal from the register. (3-30-01)

106. RESTORATION OF NAMES TO ELIGIBILITY REGISTERS.

Upon receiving appropriate evidence, the administrator shall restore the name of an eligible candidate to any eligibility register from which it has been removed for causes enumerated in Rule 104. (3-30-01)

107. REVISION OF CLASSIFICATION SPECIFICATIONS.

Whenever a classification specification is revised, the names of persons on the existing eligibility register who meet the minimum qualifications for the revised classification shall be placed in score order on the eligibility register for the revised classification. (3-16-04)

108. (RESERVED)

109. CERTIFICATION AND SELECTION.

Whenever a vacancy in a classified position is to be filled by a competitive recruitment process, the appointing authority shall make selection from a hiring list created from eligibility registers certified by the Division. Non-promotional internal or external transfers or reinstatements do not require registers certified by the Division.

(3-20-14)

110. NUMBER OF NAMES ON REGISTER.

The Division will certify a hiring list from the eligibility register, in the order of their scores, a sufficient number of names so that the appointing authority is able to select for appointment from among twenty-five (25) eligible candidates for each position to be filled. If appointments are to be made to more than one (1) position, one (1) additional name shall be added for each vacancy so that the appointing authority has twenty-five (25) names to consider for each vacancy. The names of all eligible candidates with scores identical to the twenty-fifth ranking eligible candidate on the register shall be provided to appointing authorities for selection purposes.

(3-20-14)

111. ADEQUATE REGISTERS.

A register with at least five (5) eligible candidates is adequate. If no register exists or if there are less than five (5) eligible candidates, appointing authorities may hire an eligible candidate listed on an inadequate register or request specialized recruitment.

(3-30-01)

112. -- 118. (RESERVED)

119. APPOINTMENTS, REINSTATEMENTS, TRANSFERS, AND RESIGNATIONS.

01. Reemployment Preference Register. New appointments to a classification within an agency are not permissible if there is an agency reemployment preference register (Ref. Rule 101.01) for that classification with names of eligibles who are willing to accept employment.

(5-8-09)

02. Probationary Period Required. All appointments to positions in the state classified service whenever adequate eligibility registers exist for the classification are probationary appointments except as otherwise provided in Rules 040 and 150.

(5-8-09)

120. LIMITED SERVICE APPOINTMENTS.

01. Designation. Classified positions expected to be of limited duration due to funding or nature of the position or project must be identified and designated in advance of announcement.

(3-16-04)

02. Permanent Status and Expedited Layoff. Employees appointed under limited-service appointments have permanent classified status after successful completion of probation. These employees have the same rights and responsibilities as other permanent employees but may be subject to expedited layoff pursuant to Rule 140.01.c.

(5-8-09)

03. Limited Service Agreement. Appointing authorities making limited-service appointments must prepare, no later than the date of appointment, a written agreement for signature of both the employee and appointing authority describing the non-career nature of the appointment, potential for layoff, and the duration the employee may expect to work. Renewals and updated agreements are required every two (2) years. A copy of the agreement must be kept by the appointing authority.

(3-29-17)

121. SEASONAL APPOINTMENT.

01. Purpose. An appointing authority may make a seasonal appointment from a register for work that occurs intermittently during the year. (Ref. Section 67-5302(31), Idaho Code).

(3-16-04)

02. Employee Rights. Employees appointed under a seasonal appointment will have all obligations, rights, and privileges of any classified employee except those accorded by Rules 140 through 147, relating to reduction in force.

(3-16-04)

03. Separation. Employees appointed under a seasonal appointment may be separated from the seasonal appointment and returned as frequently as intermittent workload dictates. (3-16-04)

04. Duration of Appointment. If an employee has not been called to work for six thousand two hundred forty (6,240) hours (three (3) years), the seasonal appointment expires; rehire of the employee must be from a register. (12-10-90)

122. TEMPORARY APPOINTMENTS (NON-CLASSIFIED).

01. Hours Limitation. Temporary appointments are limited to one thousand three hundred eighty-five (1,385) hours of work in any twelve (12) month period for any one agency. Both calculations begin on the date of the original temporary appointment (Ref. Section 67-5302(33), Idaho Code). (3-29-17)

02. Transition to Classified Service. Temporary employees who have served at least one thousand forty (1,040) hours of continuous service, may go from temporary status to classified entrance probation status in that same position without further examination if the announcement for the temporary position from which the certified register was created indicates that the temporary position has the potential of becoming a permanent classified position. The classified position must be in the same classification and at the same location as announced. (3-29-17)

123. PROJECT-EXEMPT APPOINTMENTS (NON-CLASSIFIED).

Project-exempt appointments are non-classified positions and are limited to the length of the project grant or twenty-four (24) months, or four thousand one hundred sixty (4,160) hours of credited state service, whichever is shorter. (Ref. Section 67-5303(m), Idaho Code) (3-16-04)

124. REINSTATEMENTS.

01. Eligibility. As determined by the administrator, a current or former employee will be eligible for reinstatement to a classification in which he held permanent status, or if deleted its successor, or to another classification of equal or lower pay grade under the following conditions (salary treatment is covered by Rule 072.06). (5-8-09)

a. Reinstatement is limited to a period equal to the length of the employee's probationary and permanent employment combined. (3-30-01)

b. The current or former employee must have separated from the classification for which reinstatement is desired without prejudice. A former employee must also have separated from state classified service without prejudice. (3-16-04)

c. The current or former employee must meet the current minimum qualifications of the classification to which reinstatement is desired. (3-16-04)

02. Reinstatement Prohibited. Reinstatement of a current or former employee is not permissible as long as there is an agency register (Ref. Rule 101.01) for that classification with names of eligibles who have reemployment preference status. (5-8-09)

03. Examination. The administrator may require a current or former employee to pass an examination for the classification to which reinstatement is desired. (3-16-04)

04. Probationary Period. An appointing authority may negotiate for a probationary period as a condition of reinstatement except where prohibited. (Ref. Rules 124.05 and 145.01). (3-16-04)

05. Return from Military Duty. An employee returning from military leave without pay (Ref. Rule 250.04) who is relieved or discharged from military duty under conditions other than dishonorable will be, upon application, reinstated in his former position, or one of comparable classification, without loss of credited state service, status, or pay as prescribed by Sections 46-216, 65-508, and 65-511, Idaho Code, USERRA, or the Military Selective Service Act, Title 38, Chapter 43, U.S. Code. Application for reemployment must be made in accordance with the provisions of USERRA. Salary treatment is covered by Rule 072.09. (5-8-09)

125. TRANSFERS.

01. Authority to Transfer. An appointing authority may transfer an employee at any time from one position to another in the same classification. (3-16-04)

02. Transfer Within Pay Grade. An appointing authority may transfer an employee from a classification in which he holds permanent status to another classification allocated to the same pay grade for which the employee meets the minimum qualifications. (5-8-09)

03. Probationary Period. An appointing authority may negotiate with an employee for a probationary period as a condition for a voluntary transfer. Voluntary probation is not allowed for intra agency transfers. (Ref. Rule 150) (5-8-09)

04. Limitation. Transfers will not be used to abridge an employee's rights in reduction in force prescribed by Rules 140 through 147. (5-8-09)

05. Transfer Between Agencies. An employee is eligible for transfer between agencies in the same classification in which he holds permanent status or to another classification in the same or lower pay grade for which the employee meets the minimum qualifications. Accrued vacation and sick leave will be transferred in accordance with Rules 230.04 and 240.02. Salary treatment is covered by Rule 072.06. (5-8-09)

06. Restriction. Transfer of an employee between agencies is not permissible as long as there is a agency register with reemployment preference status (Ref. Rule 101.01) for the classification in the agency to which transfer is desired with names of eligibles who are willing to accept reemployment. (5-8-09)

07. Examination. The administrator may require an employee transferring between classifications to pass an examination for the classification to which transfer is desired. (3-16-04)

08. Involuntary Transfer. Notice and an opportunity to be heard must be given to any employee subject to an involuntary transfer. (5-8-09)

126. RESIGNATION.

01. Notice. A classified employee may resign at any time. A resignation is effective at the time designated by the employee, without need for written or advance notice, or acceptance of the resignation by the appointing authority. (5-8-09)

02. Rescission and Reinstatement. Once an employee has submitted a resignation, reinstatement is in the discretion of the appointing authority as provided in Rule 124. The appointing authority may but is not required to allow an employee to rescind a resignation prior to its effective date. (5-8-09)

03. Resignation in Lieu of Dismissal. An employee may resign in lieu of being dismissed for cause. (7-1-93)

127. -- 128. (RESERVED)

129. ACTING APPOINTMENT TO A POSITION.

01. Conditions for Acting Appointment. At the discretion of an appointing authority, a classified employee with permanent status may be appointed to a position in a classification of higher pay grade within his own agency in an acting capacity whenever: (5-8-09)

a. The incumbent of the position in the higher classification is on authorized leave of absence; or (3-16-04)

b. A vacancy exists and there is no agency register with reemployment preference status (Ref. Rule

101.01) with names of eligibles who are willing to accept reemployment, nor adequate agency register for the classification. (5-8-09)

02. Minimum Qualifications. To be eligible for an acting appointment, an employee must meet the minimum qualifications of the class. (4-5-85)

03. Notification. Appointing authorities must notify the administrator of each acting appointment no later than the effective date of the appointment unless an exception is specifically authorized by the administrator. (5-8-09)

04. Effective Date. The effective date of each acting appointment may be retroactive to the beginning of the pay period during which approval is granted. (3-16-04)

130. LIMITATION ON LENGTH OF APPOINTMENT.

Acting appointments are limited to the period of time necessary to fill the vacancy pursuant to procedures prescribed in these rules but in no case can continue beyond one thousand forty (1,040) hours of credited state service unless specifically extended by the administrator. (3-16-04)

131. SALARY.

For any credited state service which an employee serves in a classification in an acting capacity, he or she shall receive the salary for the classification as though he or she had actually been promoted. (3-16-04)

132. EXPIRATION OF APPOINTMENT.

01. Return of Incumbent. When the incumbent of the classification returns from leave of absence, or the vacant position is filled, the acting appointment expires. The acting appointee is returned to the class, the pay grade and rate held immediately preceding the acting appointment. (3-16-04)

02. Failure of Incumbent to Return. Should the employee on leave of absence separate from state service, the employee serving in the acting appointment may continue to serve in that capacity until the vacancy has been filled but in no case exceed the time limits prescribed in Rule 130. (3-16-04)

133. -- 139. (RESERVED)

140. REDUCTION IN FORCE.

01. Conditions for Layoff. An appointing authority may lay off an employee whenever necessary due to: shortage of funds or work; reorganization; the end of a limited service appointment; employee's failure to complete interagency promotional probation when demotion options are not available; or abolishment of one (1) or more positions (ref. Rule 066). (3-16-04)

02. Layoff Decisions. Layoff decisions must not be based on race, color, national origin, gender, age, religion, disability, or political affiliation. Layoffs must be accomplished in a systematic manner with equity for the rights of classified employees and not do away with an employee's right to problem solving, or appeal if the layoff is in fact a dismissal. (5-8-09)

03. Assessment for Adverse Impact. In planning and conducting a reduction in force, the appointing authority must consider the effect layoff units and positions to be abolished may have on the composition of the agency work force. If layoff units or exclusions are established, adverse impact of protected classes must be assessed. The appointing authority must administer the reduction in force consistent with state and federal laws, and rules and guidelines governing adverse impact. (5-8-09)

04. Layoff by Position. Reduction in force must be by classification of position. (5-8-09)

a. Reduction in force may be limited to or specifically exclude employees appointed under selective certification (Ref. Rule 112) for bona fide occupational qualifications, or appointed to a classification with minimum qualification specialties. Inclusions or exclusions must include or exclude all incumbents of the classification

appointed under similar selective certification, or the same option or minimum qualification specialty and must be approved in advance by the administrator. (3-16-04)

b. An appointing authority may petition the administrator to exclude an individual from a reduction in force whose retention may be required to meet agency mission critical needs. Requests must provide a documented rationale with exclusions approved in advance by the administrator. ()

c. Limited-service appointments are defined by the project, program, or function for which the appointments were made. When a limited service project is completed or funding concluded, the limited service appointee is separated from state service as a layoff. However, limited service appointees have no reemployment preference and will not displace other regular permanent or limited services staff via voluntary demotion in lieu of layoff. (3-16-04)

05. Layoff Unit. Reduction in force must be agency-wide or by organizational unit designated for layoff purposes. Layoff units are geographic, programmatic, or other identified subdivisions of an agency designated for layoff purposes by the appointing authority. They must be approved by the administrator before the effective date of the layoff. Organizational layoff unit designations must be renewed with a change in appointing authority or administrator. (5-8-09)

06. Reduction of Hours Worked. An involuntary reduction in the number of hours worked for a selected position constitutes a layoff unless there is an equal reduction of hours worked for all positions in the same classification in the agency or approved layoff unit for a limited period of time, such as a furlough. (5-8-09)

07. Downward Reclass. A material change in duties of one (1) or more positions resulting in an employee's reclassification to a classification allocated to one (1) pay grade lower does not constitute a layoff (Ref Rule 067). More than one (1) pay grade change downward is considered a layoff, unless the change of duties is disciplinary (Ref. Section 190). (5-8-09)

141. CALCULATION OF RETENTION POINTS.

There will be an evaluation of all employees in the classification in the agency or organizational unit affected by the reduction in force based on a retention point system. Retention points are derived from experience as described in performance evaluations, classified credited state service, and veterans preference as described in Rule 141.03. The appointing authority will determine a process for the impartial assessment of evaluations to assign points as follows:

Exemplary Performance	-	.100 points
Solid Sustained Performance	-	.075 points
Achieves Performance Standards	-	.050 points
Does Not Achieve Performance Standards	-	.0 points

(3-20-14)

01. No Performance Evaluation on File for a Twelve-Month Period. All credited state service for which there is no performance evaluation will receive seventy-five thousandths (.075) points per hour. A supervisor's failure to document performance in a timely manner cannot be used to disadvantage an employee during retention point calculation. (5-8-09)

a. Grace period. Supervisors have ninety (90) days after each two thousand eighty (2,080) hours an employee works to complete the performance evaluation documentation. During that ninety (90) day time frame, the evaluation may be written to cover the two thousand eighty (2,080) hours or extended to also cover the time frame up to the date of the evaluation. (3-16-04)

b. Changes in prior periods not allowed. Once an evaluation has been signed by the supervisor, employee, manager, and other applicable reviewers, the document may not be changed, unless the change is a result of a problem solving dispute resolution. (3-16-04)

02. Calculation of Retention Points Since Last Evaluation. The most recent performance evaluation should be used to pro-rate retention points when calculating credited state service since that evaluation, unless that evaluation occurred more than two thousand eighty (2,080) hours from the date of calculation. In such cases, points are calculated in conformance with Rule 141.01. (5-8-09)

03. Veterans Preference. Veterans as defined in Title 65, Chapter 5, Idaho Code, will receive preference by the addition of retention points equivalent to three (3) years of service at a level that achieves performance standards. (Ref. Section 65-501, Idaho Code) (3-20-14)

04. Calculation Date Cutoff. No points will be calculated for the sixty (60) days prior to the effective date of the layoff. (3-16-04)

05. Audit of Retention Points. Each employee is entitled to an audit of retention points by an independent auditor designated by the administrator in cases of dispute between the appointing authority and the employee. The request for audit must be filed with the appointing authority within five (5) calendar days of the employee's receipt of layoff notification. The decision of the independent auditor is binding on both parties unless an appeal is filed within thirty-five (35) calendar days from the date of the auditor's notification to the affected parties. (5-8-09)

142. CREDITED STATE SERVICE.
Eligible credited state service for purposes of Rule 140 is defined as follows: (4-5-85)

01. Service Prior to State Personnel System. All credited state service prior to the establishment of classified service, Title 67, Chapter 53, Idaho Code. (Ref. Sections 67-5332 and 59-1604, Idaho Code, for definitions of credited state service) (4-5-85)

02. Classified Service. All classified credited state service since the establishment of classified service. (4-5-85)

03. Nonclassified Service. All credited state service in a position exempt from classified service if that position is subsequently transferred to classified service pursuant to Rule 040. (7-1-87)

143. REDUCTION IN FORCE DETERMINATION AND NOTIFICATION.

01. Identification of Classifications. The appointing authority will identify the classification of positions to be reduced or eliminated. (5-8-09)

02. Calculation of Retention Points. Retention points will be calculated for all employees assigned to the classification of position including those serving in underfill positions. Retention points need not be calculated where layoff involves a single-incumbent class. (5-8-09)

03. Order of Reduction in Force. The order of reduction in force will be by type of appointment held by the employee in the affected classification as follows: first to be laid off are the entrance probationary appointees, and then the permanent appointees including those serving a voluntary probation. Employees will be placed on the layoff list beginning with the employee with the highest number of retention points. Employee layoffs will be made from the layoff list in inverse order. When two (2) or more employees have the same combined total of retention points, retention will be determined in the following sequence: (Ref. Rule 150.02.c.) (3-28-18)

a. The employee with the highest total retention points for the past thirty-six (36) months. (3-16-04)

b. Random selection. (4-5-85)

04. Notification to Affected Employees. Each employee affected will be notified in writing of layoff and the rationale for the decision at least fifteen (15) calendar days prior to the effective date. Notification will include a copy of the agency layoff procedure and a copy of the computation of retention points when required (Ref. Rule 143.02). (5-8-09)

05. Notification to Administrator. The appointing authority must give written notice of layoff to the administrator at least fifteen (15) calendar days prior to its effective date and must provide a list of persons affected by the layoff with their retention point calculations and must indicate which employees will be laid off. (5-8-09)

144. PLACEMENT ON REGISTER WITH REEMPLOYMENT PREFERENCE.

A permanent employee laid off from their job or who chooses a voluntary demotion in lieu of a layoff, under these rules shall be placed on their classification's register with reemployment preference in unranked order. Such placement will be for one (1) year from the effective date of demotion or layoff, or until the employee or former employee declines a total of three (3) separate job offers without good cause, whichever comes first. (Rule 104.01.n.) An employee or former employee may request their name be removed at any time. (3-16-04)

145. USE OF REGISTERS WITH REEMPLOYMENT PREFERENCE.

01. Priority for Reemployment by Agency that Conducted the Layoff. (3-16-04)

a. The employee who has been laid off will be offered reemployment to a position in the classification from which laid off, before any person outside that agency may be promoted to, transferred to, reinstated or appointed to that classification by an appointing authority of that agency. Appointing authorities may reassign or transfer individuals who are in the same classification within their agency but may not demote, promote, reclassify, or make acting appointments to that classification. If that agency determines a need to fill that classification, the employee who was laid off has first priority for that position. (Ref. Rules 125.04 and 125.08) Extenuating circumstances due to short term budget, workload, location, or other complexities may be used by the appointing authority to request a temporary waiver of this rule by the administrator. (4-7-11)

b. When attempting to fill vacancies for a classification where a lay off occurred, the agency will provide an opportunity to interview and will make their hiring selection from the individuals their agency laid off from the classification, including those separated from state service under Rule 241.02 and those that took a voluntary demotion in lieu of layoff. (5-8-09)

c. Individuals being returned to the classification from which they were laid off will be reinstated with the same salary, permanent status and their sick leave balance restored. If the pay minimum has increased, see Rule 072.03. (5-8-09)

02. Consideration for Hire by Other Agencies. For promotional opportunities, internal agency candidates are normally considered before outside recruitment occurs, including other agencies' laid off candidates. However, individuals who have been laid off must be offered the opportunity to interview before other agencies consider candidates from statewide promotional or open-competitive recruitments. (3-16-04)

03. Employment by Other Agency. Individuals may be reappointed or reinstated if eligible. The salary of an employee re-hired after a layoff is negotiable between the employee and new appointing authority in the current pay grade for the classification in which the employee is appointed. (3-16-04)

04. Return to Register. If an individual finds another agency's position unsatisfactory or does not satisfactorily complete a voluntary probation period, he may be placed back on a register for the remainder of their twelve (12) month time frame. Individuals appointed to a position, other than the classification from which laid off, will remain on preference register status for the remainder of the twelve-month (12) period if otherwise eligible. (5-8-09)

146. (RESERVED)

147. VOLUNTARY DEMOTION IN LIEU OF LAYOFF.

Within their layoff unit, an employee with permanent status may choose to accept a voluntary demotion rather than be laid off. Demotion options are limited to a classification, or if deleted, its successor, in which the employee held permanent status in the agency. Such demotion will not be permitted if it causes the layoff of an employee with greater retention points. (5-8-09)

01. Eligibility. (3-16-04)

a. Qualified. Employee must meet the classification's current minimum qualifications and any minimum qualification specialties. (3-16-04)

b. Exclusion. Limited service appointees are not eligible to take any voluntary demotion that would result in the displacement of other employees. However, voluntary demotions to a vacant position are allowed with the approval of the appointing authority. (3-16-04)

02. Acceptance. To accept a voluntary demotion rather than a layoff, the employee must notify the appointing authority in writing of their decision no later than three (3) working days after written notification of the layoff and opportunity to demote to a specific position. (3-16-04)

148. -- 149. (RESERVED)

150. PROBATIONARY PERIODS.

01. Probationary Period Required. Except as provided in Rule 040, every appointment and promotion to a classified position is probationary. (3-28-18)

02. Types of Probationary Periods. The probationary period serves as a working test period to provide the agency an opportunity to evaluate a probationary employee's work performance and suitability for the position. There are three (3) types of probationary periods: (5-8-09)

a. Entrance probation is the probationary service required of an employee at the time of his original appointment or any subsequent appointment to state classified service excluding reinstatement and transfer, the duration of which is one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who must serve two thousand eighty (2,080) hours. (5-8-09)

b. Promotional probation is the probationary service required when an employee is promoted, the duration of which is one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who must serve two thousand eighty (2,080) hours. (5-8-09)

c. Voluntary probation is an agreement between employees and the appointing authority for interagency employment actions such as reinstatement, transfer, or voluntary demotion. A voluntary probation is not to be used for employment actions within the agency. The probationary period is negotiable but may not exceed one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who may serve up to two thousand eighty (2,080) hours. (5-8-09)

03. Extension of Probationary Period. Upon written request demonstrating good cause, the administrator may extend the probationary period of an employee for an additional specified period not to exceed one thousand forty (1,040) hours of credited state service. Extension must occur before an employee has worked one thousand forty (1,040) hours or two thousand eighty (2,080) hours for peace officers. (Ref. Section 67-5309(j), Idaho Code) (5-8-09)

04. Interruption of Probationary Period. The probationary period in any classification must be completed within a single agency uninterrupted by termination (Ref. Rule 152.02) or dismissal (Ref. Rule 190). An employee who separated during the probationary period must begin a new probationary period upon reappointment or promotion. (5-8-09)

05. Temporary Service Credit. At the request of the hiring agency, the administrator will allow temporary service time in a given classification to be used toward fulfilling the entrance probationary requirement in that classification as established in Section 67-5309(j), Idaho Code. The temporary duties must be substantially the same as the regular permanent appointment. (Ref. Section 67-5309(x), Idaho Code, and Rules 122 and 150.01) (3-29-12)

06. Acting Service Credit. At the request of the hiring agency, the administrator will allow acting appointment service time in a given classification to be used toward fulfilling the promotional probationary

requirement in that classification as established in Section 67-5309(j), Idaho Code. The acting appointment duties must be substantially the same as the regular permanent appointment. (Ref. Section 67-5309(y), Idaho Code, and Rules 129 and 150.01) (3-29-12)

151. SATISFACTORY SERVICE.

When a probationary employee has satisfactorily served the probationary period hours, the employee will become permanent status. The appointing authority shall no later than thirty (30) calendar days after the expiration of the probationary period provide the employee and the Division a performance evaluation. Certification to permanent status is effective one thousand forty (1,040) hours of credited state service after appointment, except that it is effective two thousand eighty (2,080) hours of credited state service after appointment for peace officer classifications unless either period has been extended pursuant to Rule 150.03. (Ref. Section 67-5309(j), Idaho Code, and Rule 210.04) (3-29-17)

152. SEPARATION DURING PROBATION.

01. Notification. If a probationary employee does not serve satisfactorily, the appointing authority must provide the employee and the Division a performance evaluation indicating unsatisfactory performance in order to process the failure to complete probation separation within thirty (30) days after the expiration of the probationary period. (Ref. Section 67-5309(j), Idaho Code, and Rule 210.04) (3-29-17)

02. During Entrance and Voluntary Probation. (3-30-01)

a. An employee who does not serve satisfactorily during the entrance or voluntary probation must first be given the opportunity in writing to resign without prejudice; an employee who fails to resign may be terminated without cause assigned and without the right to file for problem-solving or an appeal. (Ref. Section 67-5309(j), Idaho Code, and Rule 210.04) (5-8-09)

b. Notice to the employee of termination for unsatisfactory service must be made not later than fifteen (15) calendar days prior to the effective date of termination, unless there are extenuating circumstances. (5-8-09)

153. UNSATISFACTORY PERFORMANCE DURING A PROMOTION PROBATION PERIOD.

01. Disciplinary Action. Regardless of the probation status, when a Rule 190 violation supports demotion, suspension, or dismissal, such action may occur. (3-16-04)

02. Intra-Agency. If an employee, on promotional probation, does not meet performance expectations, he or she shall be returned to a position in the classification which he or she holds permanent status or to another classification in the same pay grade for which the employee meets minimum qualifications. If the employee refuses to accept the position, it is considered a voluntary resignation. (3-16-04)

03. Inter-Agency. (3-16-04)

a. The employee may voluntarily demote to a vacant position in any classification he or she has held permanent status in state career service. However, the employee must meet the current minimum requirements for that classification. If more than one (1) option exists for demotion, the employee should be placed in the higher paid position, but the specific assignment is up to the appointing authority. (3-16-04)

b. If no position is available for the voluntary demotion option, the employee may be laid off and may: (3-16-04)

i. Request their name be placed on a register with reemployment preference rights for the next available vacancy in the classification they would have demoted to in his/her new agency; and/or (3-16-04)

ii. Request their name be placed on a register for the classification in the agency where they last held permanent status. (3-16-04)

c. When reinstatement occurs in the classification they promoted from, in the new agency or the prior

agency, the employee's name is removed from reemployment required preference status. (3-16-04)

154. FAILURE TO PROVIDE PERFORMANCE EVALUATION.

If the appointing authority fails to provide a performance evaluation as required in Rule 151, the employee shall be considered to have satisfactorily completed the probationary period and be certified to permanent status as provided by Rule 151, unless the probationary period has been extended by the administrator. (Ref. Rule 150.03) (3-16-04)

155. -- 158. (RESERVED)

159. STATUS AND TENURE.

01. Probationary Promotions. Employees serving a promotional probationary period have continued permanent status in the classification from which promoted until they are certified as having satisfactorily completed the promotional probationary period in the classification to which promoted. (Ref. Rules 151, 152, and 153) (5-8-09)

02. Tenure of Employment. All employment in the state classified service is without definite term except where the term may be specified by law, or under conditions of a limited-service appointment. (Ref. Rule 120) (5-8-09)

160. -- 168. (RESERVED)

169. PROMOTIONS.

01. Use of Promotional Registers. (7-1-93)

a. Preference for Promotion. Whenever practical, a vacancy in a classified position must be filled by the promotion of an employee in the agency in which the vacancy occurs. (Ref. Section 67-5309(g), Idaho Code) (5-8-09)

b. Exception. An appointing authority may request that a position be filled from a statewide promotional register (Ref. Rule 101.03) or an open competitive register (Ref. Rule 101.04) whenever he determines that such an appointment will best serve the interests of the agency. (5-8-09)

c. Agency Registers with Reemployment Preference Status. Promotions to a classification are not permissible as long as there is an agency register with reemployment preference status (Ref. Rule 101.01) for the classification with names of eligible candidates who are willing to accept reemployment. (5-8-09)

02. Interagency Promotions. All interagency promotions must be made using statewide promotional registers (Ref. Rule 101.03) (5-8-09)

03. Eligibility for Promotion. Promotional appointees must have permanent status (Ref. Rule 159) and meet the minimum qualifications of the promotional classification. (5-8-09)

04. Promotion, In-Grade. To reflect unique agency organization design, an agency may choose to request an internal competitive process to recognize the advancement of an employee with permanent status from a position occupied in one classification to a position in another classification having greater points or a unique specialty area, but within the same pay grade. With the approval of the administrator, an in-grade promotion will be treated in all regards as a promotion. (4-7-11)

170. -- 178. (RESERVED)

179. DEMOTIONS.

Demotions are reductions of an employee from a position which the employee occupies in one classification to a position in another classification in a lower pay grade. Demotions authorized under these rules apply to both probationary and permanent status employees who meet the minimum qualifications of the classification to which demoted. (5-8-09)

180. (RESERVED)

181. NONDISCIPLINARY DEMOTION OPTIONAL.

An appointing authority may allow a voluntary demotion when requested or accepted by an employee and approved by the appointing authority. (3-16-04)

182. DISCIPLINARY DEMOTION.

An appointing authority may make a disciplinary demotion for causes enumerated in Rule 190 that are not sufficiently severe to warrant dismissal. (7-1-87)

183. -- 189. (RESERVED)

190. DISCIPLINARY ACTIONS.

01. Cause for Disciplinary Actions or Separation From State Service. Dismissal, suspension, demotion, or the reduction in pay, of a classified employee, may occur for any of the following causes during the employee's employment: (5-8-09)

a. Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes, or rules of the agency or the Division and Idaho Personnel Commission. (5-8-09)

b. Inefficiency, incompetency, or negligence in performing duties, or job performance that fails to meet established performance standards. (5-8-09)

c. Physical or mental incapability for performing assigned duties, if a reasonable accommodation cannot be made for the disabling condition. (5-8-09)

d. Refusal to accept a reasonable and proper assignment from an authorized supervisor. (4-5-85)

e. Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the agency. (5-8-09)

f. Intoxication or being under the influence of alcohol, or the misuse of medications or controlled substances, while on duty. (5-8-09)

g. Careless, negligent, or improper use or unlawful conversion of state property, equipment, or funds. (4-5-85)

h. Use of any influence which violates the principles of the merit system in an attempt to secure a promotion or privileges for individual advantage. (4-5-85)

i. Conviction of official misconduct in office, or conviction of any felony, or conviction of any other crime involving moral turpitude. (4-5-85)

j. Acceptance of gifts in exchange for influence or favors given in the employee's official capacity. (5-8-09)

k. Habitual pattern of failure to report for duty at the assigned time and place. (4-5-85)

l. Habitual improper use of sick leave. (4-5-85)

m. Unauthorized disclosure of confidential information from official records. (4-5-85)

n. Absence without leave. (4-5-85)

o. Misstatement or deception in application for employment. (4-5-85)

p. Failure to obtain or maintain a current license or certificate lawfully required as a condition in performance of duties. (4-5-85)

q. Prohibited participation in political activities. (Ref. Section 67-5311, Idaho Code) (4-5-85)

02. Suspension for Investigation. An appointing authority may place an employee on administrative leave for investigation of disciplinary causes enumerated in Rule 190.01. Each suspension for investigation will be superseded by reinstatement to duty, dismissal, disciplinary demotion, or suspension within thirty (30) calendar days of the suspension for investigation or within an extension of an additional thirty (30) calendar days approved by the administrator. Further extensions may be granted with the approval of the Administrator. (3-20-14)

03. Disciplinary Suspension. An appointing authority may suspend without pay an employee for discipline for causes enumerated above. Disciplinary suspension of an employee with permanent status is subject to appeal by the employee to the Commission. (5-8-09)

04. Suspension on Felony Charges. An appointing authority may suspend without pay an employee upon the issuance of a complaint, an information or indictment for felony charges. Such suspensions may remain in effect during the time such charges are pending. Full reinstatement of all benefits and salary that the employee would have otherwise been entitled must be provided by the appointing authority to the employee upon a subsequent finding that charges or information were without grounds or the employee was not found guilty. For the purpose of this rule, a judgment withheld under Rule 33(d) of the Idaho Rules of Criminal Procedure is a conviction. (5-8-09)

05. Notice to Administrator. Whenever an appointing authority considers it necessary to take disciplinary action against an employee, he must notify the employee and the administrator concurrently in writing; and set forth the specific rules violated and the reasons for the action. Suspensions with pay for investigation (Ref. Rule 190.02) may be made without prior notice to the employee; in this case, the appointing authority must notify the administrator as soon as practical. (5-8-09)

191. -- 199. (RESERVED)

200. PROBLEM-SOLVING AND DUE PROCESS PROCEDURES.

01. Overview of Procedures. (3-30-01)

a. The due process procedure deals with the disciplinary matters set forth in Section 67-5315(2), Idaho Code, dismissals, suspensions without pay, and demotions, and with all involuntary transfers. The due process procedure generally requires the employee receive notice and an opportunity to respond before a disciplinary decision or involuntary transfer is made by the agency. Decisions regarding disciplinary dismissals, suspensions without pay, and demotions may be appealed in accordance with Rule 201. (5-8-09)

b. The problem-solving procedure deals with all matters not specifically reserved for the due process procedure. Problem solving decisions may not be appealed to the Commission except as authorized by Section 67-5316, Idaho Code. (5-8-09)

02. Establishment of Agency Problem-Solving and Due Process Procedures. Each participating agency must maintain written employee problem-solving and due process procedures, which have been approved by the administrator for conformity to law and Rule 200. (5-8-09)

03. Eligibility and Time for Filing Under Problem-Solving Procedure. Any classified employee with permanent, or entrance probationary status may file under the problem-solving procedure as defined by Section 67-5315(1), Idaho Code. An employee must file under the problem-solving procedure in writing not later than ten (10) working days after being notified or becoming aware of a nondisciplinary matter which may be handled through the problem-solving procedure; however, if the filing alleges an ongoing pattern of harassment or illegal discrimination, the agency is strongly encouraged to waive any time limits. The time limit for filing will be extended due to the employee's illness or other approved leave, up to ten (10) days after return to the job. The agency may accept a filing that is or appears to be filed late. Agency policies may provide for waiver of time elements or any intermediate step of the problem-solving procedure upon mutual agreement of the employee and appointing

authority.

(3-28-18)

04. Elements of the Problem-Solving Procedure. The procedure must contain a statement from the agency head encouraging employees to use the procedure for any nondisciplinary, job-related matters, and encouraging the employee, supervisors, and upper-level managers and administrators to resolve the matter at the lowest management level possible within the organization. The statement must also provide a means whereby agency representatives can obtain timely authority, if needed, to resolve the matter. The procedure must require the employee to make a reasonable attempt to discuss the issue with the immediate supervisor before filing. After a written filing is received, the procedure must provide for such additional levels of management within the employee's chain of command as are appropriate in the agency. The procedure must also provide for the use of an impartial mediator upon agreement by the employee and agency. Timelines must not exceed five (5) working days between each step unless both the employee and the agency agree, in writing, to a specific number of days to extend the timelines herein, not to exceed thirty (30) days between each step. The procedure must also inform the employee that he is entitled to be represented by a person of the employee's own choosing at each step of the procedure, except the initial informal discussion with the immediate supervisor. Two (2) or more employees may join in a single filing under the problem-solving procedure. Retaliation for filing under the problem-solving procedure, for participating as a witness, or representative is expressly prohibited. This procedure does not apply to unsatisfactory performance during entrance probation (Ref. Sections 67-5309(j), 67-5315(1)(4), Idaho Code, and Rule 152). (3-29-17)

05. Filings Alleging Sexual Harassment or Other Illegal Discrimination. Each agency's problem-solving procedure must provide an optional alternative procedure for an employee to file allegations of sexual harassment or discrimination based on race, color, sex, national origin, religion, age, or disability. The procedure must expressly prohibit sexual harassment and discrimination. Employees must be informed of their right to file complaints with the Idaho Human Rights Commission. The alternative procedure must designate a specific person or persons to receive and investigate such filings, and require that the investigation and resolution of them be conducted with maximum regard for confidentiality. (5-8-09)

06. Elements of Due Process Procedure. An agency must provide notice and an opportunity to respond before making a decision to impose any disciplinary sanction or involuntary transfer, as set forth in Section 67-5315(2), Idaho Code. With respect to notice, an agency must provide notice of the contemplated action, the basis or reason for the contemplated action, and an explanation of the evidence supporting the contemplated action. The notice must be provided to the employee and administrator concurrently. With respect to the opportunity to respond, the employee must be given the opportunity to respond to the notice and present reasons why the contemplated action should not be taken. The opportunity to respond must not occur later than ten (10) working days after the employee has received notice, unless both the employee and agency agree otherwise in writing. After the employee has responded, or after the period to respond has expired or has been waived in writing by the employee, whichever occurs first, the appointing authority, or designee, must make and implement the agency's decision not later than ten (10) working days thereafter, excluding days the appointing authority, or designee, is out of the office, unless both the employee and agency agree otherwise in writing. The procedure must inform the employee of his right to be represented by a person of the employee's own choosing during the opportunity to respond. The procedure must also provide for the use of an impartial mediator upon agreement by the employee and agency. The procedure does not apply to unsatisfactory performance during entrance and promotional probation (Ref. Sections 67-5309(j), 67-5315(2), Idaho Code, and; Rules 150 through 153). The due process procedure is complete when the appointing authority, or designee, mails or delivers a decision to the affected employee. The decision must also be sent to the administrator concurrently. (5-8-09)

07. Notification. A copy of the approved problem-solving and due process procedures must be furnished and explained to each employee with permanent, or entrance probationary status in the agency concerned. (3-28-18)

08. Assistance to Agencies. The administrator will assist agencies whenever requested in the development or revision of their agency problem-solving and due process procedures. (5-8-09)

201. APPEAL PROCEDURE.

01. Idaho Rules of Administrative Procedure of the Attorney General. In addition to the following rules on appeals and petitions for review, the "Idaho Rules of Administrative Procedure of the Attorney General" on

contested cases, IDAPA 04.11.01.000 et seq., apply with the following exceptions, which are inconsistent with the Commission's statute or practice: IDAPA 04.11.01.055, 202, 240, 250, 270.01, 280, 300, 302, 651, 720, 730, 740, 790, 791, 821.02, and 860. Petitions for rulemaking and declaratory rulings are addressed in Rules 270 and 271.

(3-16-04)

02. Filing of Appeal and Appearances. Every appeal filed with the Commission must be written and state the decision that is being appealed and the action requested of the Commission. The Commission must serve a copy of the appeal on the respondent and upon the legal counsel for the Commission. Notices of appearance and notices of substitution of counsel need not be filed by deputy attorneys general or members of law firms already representing a party in an appeal or petition for review. ()

03. Time for Appeal. An appeal from a decision of an appointing authority is deemed to be timely filed if received at the office of the Commission within thirty-five (35) calendar days after completion of the agency due process procedure. Personal delivery or deposit in the United States mail, postage prepaid, of a written notification to the affected employee of the appointing authority's decision constitutes completion of the agency due process procedure. An appeal of a decision or action of the administrator or staff must be filed at the office of the Commission within thirty-five (35) calendar days of personal delivery of notice of the decision or action, deposit of the notice in the United States mail, postage prepaid, or deposit of the notice in Statehouse mail. (5-8-09)

04. Non-Jurisdictional Appeals. Appeals which are non-jurisdictional may be dismissed without motion by the hearing officer, the chair of the Commission, or his designee. If a hearing officer orders such a dismissal, the dismissal may be appealed to the Commission as a petition for review pursuant to Rule 202.01. If the chair of the Commission orders such a dismissal, it constitutes the final order of the Commission and may be appealed pursuant to Sections 67-5317(3) and 67-5318, Idaho Code. (5-8-09)

05. Setting of Hearing. Within fifteen (15) days after receiving the appeal from the Commission, the hearing officer must consult with the parties to set a mutually agreeable date for hearing. The hearing officer may thereafter postpone or continue the hearing for good cause. (5-8-09)

06. Filing of Documents. Once an appeal is referred to the hearing officer, all documents relating thereto must be filed directly with the hearing officer during the pendency of the appeal with copies provided simultaneously to opposing counsel and unrepresented parties. ()

07. Burden of Proof. In disciplinary actions, the appointing authority has the burden of proving cause for the discipline by a preponderance of the evidence. In all other actions, the appellant has the burden of proof by a preponderance of the evidence. (7-1-87)

08. Open Hearing. Every hearing is public, unless the hearing officer closes the hearing for good cause. Individual parties may represent themselves (pro se) or be represented by an attorney. (5-8-09)

09. Protective Orders. The hearing officer may issue protective orders limiting access to information obtained in the course of a hearing. (7-1-93)

10. Decision of Hearing Officer. The hearing officer must issue a decision in the form of a preliminary order explaining the right to file a petition for review under Section 67-5317, Idaho Code. The preliminary order, consisting of such findings of fact, conclusions of law and orders as are necessary, together with the record of the proceedings must be filed at the office of the Commission with a copy sent or delivered to the parties. A motion for reconsideration under Section 67-5243, Idaho Code, is not permitted. ()

11. Procedure for Award of Attorney Fees and Costs. As part of his preliminary order, the hearing officer must make findings as to the entitlement to attorney fees and costs, if any, pursuant to Section 12-117, Idaho Code. If the hearing officer finds a prevailing party is entitled to statutory attorney fees and costs, the prevailing party must file a memorandum of costs, including a supporting affidavit stating the basis and method of computation of the amount claimed. The memorandum must be filed with the hearing officer not later than ten (10) working days after receipt of the hearing officer's decision or no attorney fees and costs may be awarded. Objections to the award of attorney fees and costs must be filed not later than ten (10) working days after receipt of the memorandum of costs and supporting affidavit. The hearing officer must conduct a hearing on the award of attorney fees and costs within

ten (10) days of receiving any objections to the award. If no objections are timely filed with the hearing officer, or if the parties stipulate to have the matter decided on the briefs, no hearing is required. The hearing officer determines the amount of the award and must make written findings as to the basis and reasons for the award within ten (10) days after the hearing on the award of attorney fees and costs. If no hearing is required, the hearing officer must issue his decision on the award of attorney fees and costs no later than thirty (30) days after receipt of the prevailing party's memorandum of costs and supporting affidavit. (5-8-09)

12. Factors Considered in Award of Attorney Fees and Costs. The following factors are considered in the determination of an award of attorney fees and costs: the time and labor required;(12-10-90)

- b.** The experience and ability of the attorney; (12-10-90)
- c.** The prevailing charges for like work; (12-10-90)
- d.** The amount involved and the results obtained; (12-10-90)
- e.** Awards in similar cases; and (12-10-90)
- f.** Any other factor that appears pertinent to the award. (12-10-90)

202. PETITION FOR REVIEW PROCEDURE.

01. Filing of Petition for Review. A petition for review shall be filed at the office of the Commission within thirty-five (35) days of the hearing officer's decision issued pursuant to Rule 201.10. The petition shall be in writing and specifically cite the alleged errors of fact or law made by the hearing officer. (3-16-04)

02. Stay of Hearing Officer's Decision. Upon the filing of the petition for review, the jurisdiction of the hearing officer in the matter is ended except for resolving post-hearing motions and awarding attorney fees and costs. The hearing officer's decision and any orders entered pursuant to Rules 201.10 and 201.11 will be automatically stayed. (3-16-04)

03. Nature of Hearing. The hearing of the Commission on a petition for review will be limited to oral arguments regarding issues of law and fact as may be found in the record established before the hearing officer and any post-hearing orders. Written arguments or briefs and motions regarding the petition for review will be allowed under such terms as the Commission may direct in its notice of hearing, which will be issued at least twenty-eight (28) days prior to the date set for hearing. (12-10-90)

04. Transcript. If the petition for review involves questions of fact, the appellant shall provide a full transcript of the proceedings before the hearing officer for the Commission to review. The respondent may pay for an additional copy of the transcript for respondent's own use. (7-1-87)

05. Requests for Postponement and Other Motions. (7-1-93)

a. Except in emergencies, a request for postponement shall be filed in writing by a party or representative not later than seven (7) days before the scheduled hearing. The Chair of the Commission, or his or her designee, may determine whether good cause is shown for the postponement and grant or deny the request on behalf of the Commission. (3-16-04)

b. Motions to dismiss for lack of jurisdiction shall be decided by the Commission. All other motions shall be considered by the Chair of the Commission or at the Chair's discretion may be referred to one (1) Commissioner, whose decision on the motion may be communicated to the parties by letter or other informal means, by the Chair or by counsel to the Commission. (3-16-04)

06. Decision on Petition for Review. The decision of the Commission shall include a statement of appeal rights under Section 67-5318, Idaho Code. Motion for reconsideration of Commission decisions pursuant to Section 67-5246, Idaho Code are not permitted. The Commission shall file the original copy of its decision with the record of the proceedings and mail copies to the parties promptly. (3-16-04)

07. Record of the Proceedings. A verbatim record of the proceedings at hearings before the Commission shall be maintained either by electrical devices or by stenographic means, as the Commission may direct, but if any party to the action requests a stenographic record of the proceedings, the record shall be done stenographically. The requesting party shall pay the costs of reporting the proceedings. (7-1-87)

08. Attorney Fees and Costs in a Petition for Review. In its decision on petition for review, the Commission shall make findings as to the entitlement to attorney fees and costs, if any, pursuant to Section 12-117, Idaho Code. If the Commission finds the prevailing party, if any, is entitled to attorney fees and costs, the prevailing party shall file a request for attorney fees and costs, with accompanying memorandum and affidavit in support of the request described in Rule 201.11, with the Commission not later than ten (10) working days after receipt of the Commission's decision. Objections to the award of attorney fees and costs shall be filed not later than ten (10) working days after receipt of the request for attorney fees and costs. The Commission shall determine the amount of the award, if any, taking into account the factors defined in Rule 201.12. (3-16-04)

09. Protective Orders. The Commission may issue protective orders limiting access to information in the record. (7-1-93)

203. REFERRALS FROM FEDERAL AGENCIES ON DISCRIMINATION COMPLAINTS.

When the Division receives a complaint from a federal agency alleging violation of employment laws, the administrator must take prompt action to investigate. If the complaint is agency specific, the appointing authority will take necessary actions to ensure the investigation is thorough, staff are fully cooperative, and submit findings and any corrective action plan to the administrator and other proper authorities. (5-8-09)

204. -- 209. (RESERVED)

210. PERFORMANCE EVALUATIONS.

01. Performance Evaluations. Each agency shall use the statewide online performance evaluation system; however, another system may be used, provided it meets the basic objectives of the state's online performance evaluation system as approved in advance by the administrator. Agency records and supporting documentation are subject to review by the Division and the employee's overall performance rating must be transmitted to the administrator. (3-20-14)

02. Approval of Form. The Division will make available a standard format for purpose of the statewide online performance evaluation system. An appointing authority may utilize another form provided it meets the basic performance criteria and ratings and is approved in advance by the administrator. (3-20-14)

03. Purpose. The purpose of performance evaluation is to provide an objective evaluation by the immediate supervisor of an employee's performance in comparison with established expectations for the position; and to identify an employee's strengths and weaknesses and where improvement is necessary. All performance evaluations must be discussed with affected employee who will be allowed opportunity to submit written comments regarding the evaluation contents. (5-8-09)

04. Use of Evaluations. Performance evaluations should be used in connection with promotions, transfers, demotions, retentions, separations, and reassignments (Ref. Section 67-5309(h), Idaho Code); and used as the affirmative certification for merit increases, bonuses, and salary equity increases (Ref. Section 67-5309B, Idaho Code); and for certifying a probationary employee to permanent status (Ref. Rule 151). Other uses of performance evaluations are optional with the appointing authority. (3-20-14)

05. Evaluation Schedule. All classified employees must be evaluated for their performance during probationary periods for appointments and promotions and for every two thousand eighty (2,080) hours of credited state service thereafter (generally, an annual basis). (Ref. Sections 67-5309(h) and (j), 67-5309B(6), Idaho Code.) Part-time employees must be evaluated on an annual basis. (3-20-14)

06. Retention of Evaluation. A copy of the performance evaluation must be retained in agency records with a copy furnished to the employee. ()

07. Supervisors' Requirements. Supervisors are required to manage performance on a consistent basis including completion of performance evaluations on all employees under their direct supervision. (Ref. Section 67-5309B(6), Idaho Code) (3-20-14)

211. -- 219. (RESERVED)

220. RECORDS.

01. Employee Service Records. (7-1-93)

a. For each employee in classified service, the Division maintains a service record which must include all personnel transactions pertinent to the employee's employment history. (Ref. Section 67-5309(o), Idaho Code) (5-8-09)

b. Any employee may at all reasonable times during business hours review his service record maintained in the Division or maintained in any agency. Except for material used to screen and test for employment, all information maintained in an employee's service record must be made available to the employee or designated representative upon request. File contents may be corrected if found in error according to the procedure contained in Title 74, Chapter 1, Idaho Code. (5-8-09)

02. Administrative Records. The administrator must permanently maintain a record of the proceedings of the Commission and a record of all hearings of appeals. (5-8-09)

03. Employee Personnel Action Documents. The appointing authority must furnish each employee with notice of every personnel action affecting the employee's status, pay, tenure, or other terms and conditions of employment, including a copy of their performance evaluations. (5-8-09)

04. Transfers, Reemployment and Promotions Between Agencies. (4-7-11)

a. When an employee seeks a transfer, reemployment, or promotion between agencies, the appointing authority of the hiring agency, or designee, is entitled to examine the employee's service record and performance information before the hiring decision is made. (Ref. Section 67-5309(o), Idaho Code) (4-7-11)

b. All performance evaluation documents must be provided by the former agency and forwarded to the new agency when an interagency promotion, demotion, or transfer occurs. (3-29-17)

221. -- 229. (RESERVED)

230. VACATION LEAVE.

01. Eligibility. All classified employees, regardless of status or whether full-time or part-time, earn vacation leave and are eligible to take and be paid for unused vacation leave in accordance with Sections 67-5334, Idaho Code. (5-8-09)

02. Rate of Accrual. All credited state service (ref. Sections 67-5332 and 59-1604, Idaho Code, for definitions) are counted in determining leave accrual rate. (5-8-09)

03. Mutual Agreement. Vacation leave requested by the employee may be used only when approved by the agency. The employee and the agency must mutually agree upon such time or times when vacation leave least interferes with the efficient operation of the agency taking into consideration the vacation preference of the employee. (5-8-09)

04. Interagency Transfer. An employee who is transferred from one state agency to another agency will be credited with accrued vacation leave by the receiving agency at the time of transfer. (5-8-09)

231. -- 239. (RESERVED)

240. SICK LEAVE.

01. Eligibility. Sick leave is earned in accordance with Section 67-5333, Idaho Code. Sick leave must only be taken in pay periods subsequent to being earned. (5-8-09)

02. Interagency Transfer. An employee who is transferred from one state agency to another will be credited by the receiving agency with the amount of sick leave accrued at the time of transfer. (5-8-09)

03. Reasons for Use. Sick leave must only be used in cases of actual illness or disability or other medical and health reasons necessitating the employee's absence from work, or in situations where the employee's personal attendance is required or desired because of serious illness, disability, or death and funeral in the family. For purposes of this rule, family means a spouse, child, foster child, parent, brother, sister, grandparent, grandchild, or the same relation by marriage, or legal guardian. (5-8-09)

04. Serious Medical Conditions. Sick leave may be used in conjunction with Family and Medical Leave. (Ref. Rule 242) (5-8-09)

05. Notification. It is the responsibility of the employee to notify his supervisor as soon as possible in the event of sickness or injury which prevents the employee from reporting for duty. (5-8-09)

06. Donated Leave. Vacation leave may be transferred to another employee for the purposes of sick leave in accordance with Section 67-5334, Idaho Code. Such transfers are to be made from employee to employee. Vacation leave is retained by the donating party until it is converted to sick leave in the receiving employee's account. (5-8-09)

07. Sick Leave Abuse. A predictable and reliable level of attendance is an essential function of almost all positions. Consistent with the provisions of the Americans with Disabilities Act and the Family Medical Leave Act, a supervisor may investigate suspected sick leave abuse including a pattern of unscheduled absences which have a negative impact on the requirements of the job and take appropriate action. When an employee is absent due to illness or injury in excess of three (3) days, a doctor's certificate of justifiable cause for the absence may be required of the employee at the discretion of the immediate supervisor. A doctor's certification of illness or injury may be required of an employee for periods of less than three (3) consecutive working days whenever the immediate supervisor or manager believes special investigation of the absence should be made. (Ref. Rule 190 and Section 67-5333, Idaho Code) (5-8-09)

241. WORKERS COMPENSATION OR DISABILITY.

01. Use of Leave in a Workers Compensation Claim. In the event of a disability incurred on the job covered by workers compensation, the employee will be given the choice of either: (5-8-09)

a. Leave of absence without pay while receiving workers compensation; or (5-8-09)

b. Utilizing a portion of accrued sick or other paid leave to supplement workers compensation to maintain his regular salary; however, no appointing authority may require an employee to accept sick leave, vacation leave, or compensatory time off for overtime in lieu of workers compensation provided by law. Additionally, an employee may not waive his rights to workers compensation and cannot accept earned leave or other benefits in lieu thereof. (3-29-17)

02. Layoff After Twelve Weeks' Disability. If the employee becomes disabled, whether or not due to a workers compensation injury, and is unable to fully return to work after twelve (12) weeks' absence during any consecutive fifty-two (52) week period or when accrued sick leave has been exhausted, whichever is longer, the employee's position may be declared vacant unless otherwise prohibited by state or federal law. The twelve (12) weeks' period of absence need not occur consecutively. The employee's name is certified to a reemployment preference register when the administrator has been notified by the physician that the employee is able to return to work. (Ref. Rule 101.01) Conditional releases will be considered in accordance with the Americans with Disabilities Act. (4-7-11)

242. FAMILY AND MEDICAL LEAVE.

01. Applicability. The provisions of the federal Family and Medical Leave Act (FMLA) apply without regard to the exclusion for worksites employing less than fifty (50) employees in a seventy-five (75) mile area, and without the limitation on reinstatement of the highest-paid employees. (Ref. 29 U.S.C. 2601 et seq.). The State is one (1) employer for the purposes of FMLA. For consistency, the administrator shall publish statewide guidance on FMLA policies. (3-16-04)

02. Return to Work Release. An appointing authority may request a return to work release if, due to the nature of the health condition and the job: (3-30-01)

a. Light or limited duty work or other accommodation is requested; or (3-16-04)

b. The agency, having a reasonable basis in fact to do so, requires assurance that returning to work would not create a significant risk of substantial harm to the employee or others. (7-1-94)

243. MATERNITY AND PATERNITY LEAVE.

01. Use Of Sick Leave. Pregnancy, child birth or related medical conditions generally are considered temporary disabilities and are treated as such for sick leave purposes. Maternity and paternity leave are granted under the same conditions and requirements as other compensable and non-compensable leave under these rules, including the Family and Medical Leave Act. (5-8-09)

02. Determination of Disability Period. The employee's physician is considered the primary authority in determining the disability period insofar as compensable sick leave is concerned. (5-8-09)

03. Additional Time Off. Maternity and paternity leave preceding and following the time that the person is disabled is leave without pay unless the employee elects to use accrued vacation leave or compensatory time off for overtime. (5-8-09)

04. Discrimination Prohibited. Pregnancy discrimination is prohibited. The employee may continue to work as long as she is physically capable of performing the duties of her position and may return to work as soon as she is physically able as determined by her physician. (3-30-01)

05. Adoption and Foster Care. Leave will be granted for adoption and foster care as set forth in the Family and Medical Leave Act. (Ref. Rule 242) (3-30-01)

244. SEPARATION UPON FAILURE TO RETURN TO WORK.

Except for those employees on authorized leave or placed on a register with reemployment preference prescribed by Rule 241.02.a., an employee who has not returned to work within five (5) working days after approved paid or unpaid leave or release by his or her physician shall be considered as having voluntarily separated. Such separation shall be treated as a voluntary resignation, and the employee shall remain eligible for reinstatement as provided under Rule 124. Written notification of his or her separation/resignation shall be mailed to the last known home address. Any objections by the employee to the notice, must be received within five (5) working days of receipt of the notice, or acceptance of the separation/resignation will be presumed. If objections are received within the timeline, a disciplinary separation (dismissal) or other formal disciplinary action may be pursued as provided in Rule 190. (3-16-04)

245. -- 249. (RESERVED)

250. SPECIAL LEAVES.

01. Leave of Absence Without Pay. (7-1-93)

a. Approval. In addition to workers' compensation, family medical leave, disability, or other statewide leave policies, the appointing authority may grant an employee leave without pay for a specified length of

time when such leave would not have an adverse effect upon the agency. The request for leave must be in writing and establish reasonable justification for approval. (5-8-09)

b. Reemployment. The appointing authority approving the leave of absence assumes full responsibility for returning the employee to the same position or to another position in a classification allocated to the same pay grade for which the employee meets minimum qualifications. (7-1-87)

c. Exhaustion of Accrued Leave. Unless prohibited by workers compensation, family medical leave, disability, or other statewide leave policies, the appointing authority has discretion on whether the employee is required to exhaust accrued vacation leave or compensatory time off for overtime before commencing leave without pay. (Ref. Rule 240) (3-29-17)

d. Resignation. If vacation leave and compensatory time off for overtime are not exhausted and the employee resigns from state service while on leave, he will be paid for such accruals in accordance with Sections 67-5334 and 67-5328, Idaho Code. (3-29-17)

02. Leave Defaults. When an employee does not have accrued sick leave to cover an entire absence the following leave types will be used to the extent necessary to avoid leave without pay: accrued compensatory time and vacation. If abuse of sick leave is suspected see Rule 240.07. (5-8-09)

03. Military Leave With Pay. Employees who are members of the National Guard or reservists in the armed forces of the United States engaged in military duty ordered or authorized under the provisions of law, are entitled each calendar year to one hundred twenty (120) hours of military leave of absence from their respective duties without loss of pay, credited state service or evaluation of performance. Such leave is separate from vacation, sick leave, holiday, or compensatory time off for overtime. (Ref. Section 46-216, Idaho Code). (5-8-09)

04. Military Leave Without Pay. An employee whose employment is reasonably expected to continue indefinitely, and who leaves his position either voluntarily or involuntarily in order to perform active military duty, has reemployment rights as defined in Rule 124.05. The employee will either be separated from state service or placed in “inactive” status, at the option of the appointing authority. (5-8-09)

05. Leave of Absence With Pay. A period of absence from duty with the approval of the appointing authority, or as required or allowed by law or these rules, during which time the employee is compensated. Leaves of absence with pay have no adverse effect on the status of the employee and include the following: vacation leave; sick leave; special leave situations; compensatory time off for overtime worked; and administrative leave. (3-20-14)

06. Court and Jury Services and Problem-Solving and Due Process Leave. (7-1-98)

a. Connected with Official State Duty. When an employee is subpoenaed or required to appear as a witness in any judicial or administrative proceeding in any capacity connected with official state duty, he is not considered absent from duty. The employee is not entitled to receive compensation from the court. Expenses (mileage, lodging, meals, and miscellaneous expenses) incurred by the employee must be reimbursed by his respective agency in accordance with agency travel regulations. (5-8-09)

b. Private Proceedings. When an employee is required to appear as a witness or a party in any proceeding not connected with official state duty, the employee must be permitted to attend. The employee may use accrued leave or leave without pay. (5-8-09)

c. Jury Service. When an employee is summoned by proper judicial authority to serve on a jury, he will be granted a leave of absence with pay for the time which otherwise the employee would have worked. The employee is entitled to keep fees and mileage reimbursement paid by the court in addition to salary. Expenses in connection with this duty are not subject to reimbursement by the state. (5-8-09)

d. Problem-solving and due process procedures. Any employee who has been requested to serve as a mediator as provided by an agency problem-solving or due process procedure or to appear as a witness or representative during such a proceeding will be granted leave with pay, without charge to vacation leave or compensatory time off for overtime, to perform those duties. (5-8-09)

e. Notification. An employee summoned for court and jury service or requested to serve as a witness or representative must notify his supervisor as soon as possible to obtain authorization for leave of absence.

(3-20-14)

07. Religious Leave. Appointing authorities will make reasonable accommodations to an employee's need for leave for religious observances. Such leave is charged to the employee's accrued vacation leave or compensatory time off for overtime.

(5-8-09)

08. Leave During Facility Closure or Inaccessibility.

(7-1-93)

a. Authorization. When a state office/facility is closed or declared inaccessible by the Governor or Governor's designee because of severe weather, civil disturbances, loss of utilities or other disruptions, affected employees are authorized administrative leave to cover their scheduled hours of work during the closure or inaccessibility. If an employee was not scheduled to work on the day when an office/facility is declared closed, the employee is not eligible for administrative leave.

(3-28-18)

b. In the interest of employee safety, appointing authorities may approve employee early release, delayed start time, or absence from work due to weather or other emergency conditions. Those affected employees will use their appropriate accrued leave balances or leave without pay. Administrative leave will be granted to affected employees scheduled to work on a day the Governor or Governor's designee declares a state office/facility closed or inaccessible in accordance with Rule 250.08.a.

(3-28-18)

09. Red Cross Disaster Services Leave. Employees who have been certified by the American Red Cross as disaster service volunteers will be granted up to one hundred twenty (120) hours of paid leave in any twelve (12) month period to participate in relief services pursuant to Section 67-5338, Idaho Code.

(5-8-09)

10. Employee Assistance Program Leave. Employees may use sick leave or any paid or unpaid leave as approved to attend appointments through the Employee Assistance Program (EAP) during normal working hours.

(3-29-17)

11. Bone Marrow and Organ Donor Leave With Pay.

(5-8-09)

a. Approval. Upon request, a full-time employee will be granted five (5) work days' leave with pay to serve as a bone marrow donor or thirty (30) work days' leave with pay to serve as an organ donor. The employee must provide the appointing authority with written verification that the employee is the person serving as the donor. Paid leave, as provided in these rules, is limited to one-time bone marrow and one-time organ donor leave per employee. (Ref. Section 67-5343, Idaho Code)

(5-8-09)

b. Use. An employee who is granted such leave of absence will receive compensation without interruption during the leave period. For purposes of determining credited state service, pay advancement, performance awards, or any benefit affected by a leave of absence, the service of the employee is considered uninterrupted by the paid leave of absence. (Ref. Section 67-5343, Idaho Code)

(5-8-09)

251. ADMINISTRATIVE LEAVE.

01. Investigation and Due Process Procedure. Administrative leave may be granted by an appointing authority for employee investigations and due process procedures in accordance with Rule 190.02.

(3-28-18)

02. Closure or Inaccessibility. Administrative leave for closure or inaccessibility of a state office/facility due to severe weather, emergencies or incidents that could jeopardize agency operations, or the safety of others must be granted in accordance with Rule 250.08.

(3-28-18)

03. Other Reasons. Administrative leave for reasons other than those listed above must be approved in advance by the administrator.

(3-28-18)

252. -- 259. (RESERVED)

260. COMPENSABLE HOURS.

01. Biweekly Employees. With the exception of holiday leave, no leave may be used if it results in pay in excess of the employee's regularly scheduled work week. (5-8-09)

02. Ineligible Employees. Employees who are "executive" as defined by Section 67-5302(12), Idaho Code, are ineligible to earn or receive payment for hours worked or accrued beyond their regularly scheduled work week. (5-8-09)

261. HOURS WORKED.

01. Hours in Performance of Job. Those hours actually spent in the performance of the employee's job, excluding holidays, vacation, sick leave other approved leaves of absence, and excluding on-call time. (5-8-09)

02. Travel Time. Travel time is compensated pursuant to policy set forth by the Board of Examiners. (5-8-09)

03. Hours Outside of Regular Working Hours. Attendance at lectures, meetings, training programs, and similar activities outside of the employee's regular working hours when attendance has been directed by the appointing authority or designee. (5-8-09)

262. OVERTIME.

01. Employing Agencies. The state is considered as one (1) employer for determining the number of hours an employee works. If an employee works for more than one (1) agency, the agency employing the employee when the overtime occurs is liable for compensatory time off or cash compensation as provided by law. (5-8-09)

02. Compensation for Overtime. Overtime accrual and compensation for classified employees is covered by Sections 67-5328 and 59-1607, Idaho Code, for nonclassified employees. Overtime is defined in Section 67-5302(20), Idaho Code. Overtime does not include any time, such as occasional or sporadic work, which is excluded from the overtime calculation by federal law. (4-7-11)

03. Modification of Workweek or Schedule. No agency will alter a previously established work week for the purpose of avoiding overtime compensation. An agency may modify the employee's regular schedule of work to avoid or minimize overtime. (5-8-09)

263. -- 271. (RESERVED)

272. POLICY MAKING AUTHORITY.

To address the need for all classified employees to be treated fairly, and in situations where the State may be considered as one (1) employer, the Division Administrator may issue guidance to provide consistent interpretation of federal law, state law, executive order or rule. (5-8-09)

273. -- 999. (RESERVED)

IDAPA 17 – INDUSTRIAL COMMISSION

DOCKET NO. 17-0000-1900

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and full force and effect upon adoption of the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 72-1004, 72-1013, and 72-1104, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and 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 the change:

This pending rule adopts and re-publishes the following existing and previously approved and codified chapters promulgated as proposed rules under this docket number under IDAPA 17, rules of the Industrial Commission:

IDAPA 17

- 17.10.01, *Administrative Rules Under Crime the Victims Compensation Act*
- 17.11.01, *Administrative Rules of Peace Officer and Detention Officer Temporary Disability Act*

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of these proposed rules was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 3587–3595](#).

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.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kamerron Monroe, Commission Secretary, (208) 334-6017.

Dated this 9th day of October, 2019.

Mindy Montgomery, Director
Industrial Commission
11321 W. Chinden Blvd.
Boise, Idaho 83714
P.O. Box 83720
Boise, Idaho 83720-0041
Phone: (208) 334-6000
Fax: (208) 334-2321

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

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 Section(s) 72-301, 72-301A, 72-304, 72-327, 72-432, 72-508, 72-528, 72-602, 72-803, and 72-806, 72-1004, 72-1013, and 72-1104, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

ORIGINATING LOCATION – LIVE MEETING	
Idaho Industrial Commission 11321 W. Chinden Blvd. Building #2 Boise, Idaho 83714	
Tuesday, August 6th, 2019 – 2:00 p.m. to 4:00 p.m. (MDT)	
VIA VIDEOCONFERENCE	
IIC Coeur d’Alene Field Office 1111 W. Ironwood Drive, Suite A Coeur d’Alene, ID 83814	IIC Lewiston Field Office 1118 “F” Street Lewiston, ID 83501
IIC Idaho Falls Field Office 1820 E. 17th Street, Suite 300 Idaho Falls, ID 83404	IIC Twin Falls Field Office 1411 Falls Avenue East, Suite 915 Twin Falls, ID 83301

The hearing sites 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 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 reorganized chapters with edits under IDAPA 17, rules of the Industrial Commission:

IDAPA 17

- 17.10.01, *Administrative Rules Under Crime the Victims Compensation Act*
- 17.11.01, *Administrative Rules of Peace Officer and Detention Officer Temporary Disability Act*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule 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 three chapters contain those rules necessary for the Industrial Commission to properly administer and carry out its responsibilities under the Idaho Workers' Compensation Act (Chapter 1), the Crime Victims Compensation Act (Chapter 10) and the Peace Officer and Detention Officer Temporary Disability Act (Chapter 11).

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 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 Kamerron Monroe, Commission Secretary, (208) 334-6017.

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 or kamerron.monroe@iic.idaho.gov within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0000-1900

17.10.01 – ADMINISTRATIVE RULES UNDER THE CRIME VICTIMS COMPENSATION ACT

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 72-1004 and 72-1013, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is “Administrative Rules Under the Crime Victims Compensation Act” IDAPA 17, Title 10, Chapter 01. ()

02. Scope. This chapter includes the Industrial Commission's procedures for administering the Crime Victim's Compensation Act. ()

002. ADMINISTRATIVE APPEALS.

Chapter 1, Section 11, Subsection 5, provides for appeals to the Commission from decisions of the Crime Victims Compensation Bureau. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Commission. The Idaho Industrial Commission. ()

02. Crime Victim's Compensation Program. The program administered by the Crime Victim's Bureau of the Idaho Industrial Commission under the Crime Victim's Compensation Act. ()

03. Employer. The employer at the time of the criminally injurious conduct on which the Application for Compensation is based. ()

04. Medical Services. Words and terms used for determining the allowable payment for medical services under these rules are defined in Subsections 010.04.a. through 010.04.h. ()

a. “Allowable payment” means the lower of the charge for medical services calculated in accordance with this rule or as billed by the provider. ()

b. “Ambulatory Surgery Center (ASC)” means a facility providing surgical services on an outpatient basis only. ()

c. “Hospital” is any acute care facility providing medical or rehabilitation services on an inpatient and outpatient basis. ()

i. Large Hospital means any hospital with more than one hundred (100) acute care beds. ()

ii. Small Hospital means any hospital with one hundred (100) acute care beds or less. ()

d. “Provider” means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of medical service related to the treatment of a claimant for benefits under the Idaho Crime Victims Compensation Act. ()

e. “Medical Service” means medical, surgical, dental, mental health, or other attendance or treatment, nurse and hospital service, medicine, apparatus, appliance, prostheses and related service, facility, equipment and supply. ()

f. “Reasonable” means a charge does not exceed the Provider’s “usual” charge and does not exceed the “customary” charge, as defined in Paragraph 010.04.h. ()

g. “Usual” means the most frequent charge made by an individual Provider for a given medical service to non-industrially injured patients. ()

h. “Customary” means a charge that has an upper limit no higher than the 90th percentile, as determined by the Commission, of usual charges made by Idaho Providers for a given medical service. ()

05. Wages. Means the wages at the time of the criminally injurious conduct on which the Application for Compensation is based and includes non-cash remuneration such as lodging and meals provided by the Employer and gratuities such as tips, which are not paid by the employer, but that are received by the victim in the normal course of his employment. ()

011. APPLICATIONS FOR COMPENSATION.

01. Claim for Benefits. To claim benefits under the Crime Victims Compensation Act, the claimant shall file an Application for Compensation with the Crime Victim's Compensation Bureau of the Commission. Applications for Compensation shall be made using the form approved by the Commission. An Application for Compensation shall be deemed filed when it is received at the Commission's office in Boise. ()

02. Providing Information. Before paying benefits to any claimant, the Commission shall gather sufficient information to establish that the claimant is eligible for benefits. The Commission may require the claimant to assist the Commission in obtaining that information. ()

03. Employment Verification. To verify information concerning a victim's employment, the Commission may require the victim's Employer or Employers to complete an Employment Verification form or the Commission may obtain such information from an Employer by telephone. ()

04. Order. After sufficient information has been gathered pursuant to Subsection 011.02 of this rule, the Commission may enter an award granting or partially granting benefits or an order denying benefits. The Commission may also enter orders necessary to further the purposes of the Act. ()

05. Finality of Order. An award or order issued by the Commission shall be final and conclusive as to all matters considered in the award or order; provided that within twenty (20) days from the date that such an award or order is issued, the claimant may file a request that the Crime Victim's Compensation Program reconsider the order, or the Crime Victim's Compensation Program may reconsider the matter on its own motion, and the order of the Crime Victim's Compensation Program shall be final upon issuance of the order on reconsideration; and provided further that, within forty five (45) days from the date that any order is issued by the Crime Victim's Compensation Program, a claimant may file a Request for Hearing before the Commission. The Hearing shall be held in accordance with the procedures set out in Section 012 of these rules. Requests for Hearing before the Commission and requests that the Crime Victim's Compensation Program reconsider an order is deemed filed when received at the Commission's office in Boise. ()

06. Recipients of Payments for Medical Services. If, pursuant to any order of the Commission or the Crime Victims Bureau, it is determined that a claimant is entitled to payment of medical expenses as provided in Section 72-1019(2), Idaho Code, or funeral or burial expenses as provided in Section 72-1019(4), Idaho Code, payment shall be made directly to the medical provider or the provider of funeral or burial services unless the claimant has already paid the provider; if the claimant has already paid the provider, payment shall be made to the claimant. ()

07. Allowable Payments for Medical Services. The Commission shall pay providers the allowable payment for medical services under these rules adopted in accordance with Section 72-1026, Idaho Code. ()

a. Adoption of Standard. The Commission hereby adopts the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, as amended, as the standard to be used for determining the allowable payment under the Crime Victims Compensation Act for medical services provided by providers other than hospitals and ASCs. The standard for determining the allowable payment for hospitals and ASCs shall be: ()

- i. For large hospitals: Eighty-five percent (85%) of the reasonable inpatient charge. ()
- ii. For small hospitals: Ninety percent (90%) of the reasonable inpatient charge. ()
- iii. For ambulatory surgery centers (ASCs) and hospital outpatient charges: Eighty percent (80%) of

the reasonable charge. ()

iv. Surgically implanted hardware shall be reimbursed at the rate of actual cost plus fifty percent (50%). ()

v. Paragraph 011.07.e. of this rule, shall not apply to hospitals or ASCs. The Commission shall determine the allowable payment for hospital and ASC services based on all relevant evidence. ()

b. Conversion Factors. The following conversion factors shall be applied to the fully-implemented facility or non-facility Relative Value Unit (RVU) as determined by place of service found in the latest RBRVS, as amended, that was published before December 31 of the previous calendar year for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended:

MEDICAL FEE SCHEDULE		
DESCRIPTION	CODE RANGE(S)	CONVERSION FACTOR
Anesthesia	00000 - 09999	\$60.05
Surgery - Group One	22000 - 22999 Spine 23000 - 24999 Shoulder, Upper Arm, & Elbow 25000 - 27299 Forearm, Wrist, Hand, Pelvis & Hip 27300 - 27999 Leg, Knee, & Ankle 29800 - 29999 Endoscopy & Arthroscopy 61000 - 61999 Skull, Meninges & Brain 62000 - 62259 Repair, Neuroendoscopy & Shunts 63000 - 63999 Spine & Spinal Cord	\$144.48
Surgery - Group Two	28000 - 28999 Foot & Toes 64550 - 64999 Nerves & Nervous System	\$129.00
Surgery - Group Three	13000 - 19999 Integumentary System 20650 - 21999 Musculoskeletal System	\$113.52
Surgery - Group Four	20000 - 20615 Musculoskeletal System 30000 - 39999 Respiratory & Cardiovascular 40000 - 49999 Digestive System 50000 - 59999 Urinary System 60000 - 60999 Endocrine System 62260 - 62999 Spine & Spinal Cord 64000 - 64549 Nerves & Nervous System 65000 - 69999 Eye & Ear	\$87.72
Surgery - Group Five	10000 - 12999 Integumentary System 29000 - 29799 Casts & Strapping	\$69.14
Radiology	70000 - 79999 Radiology	\$87.72
Pathology & Laboratory	80000 - 89999 Pathology & Laboratory	To Be Determined
Medicine - Group One	90000 - 90749 Immunization, Injections, & Infusions 94000 - 94999 Pulmonary / Pulse Oximetry 97000 - 97799 Physical Medicine & Rehabilitation 97800 - 98999 Acupuncture, Osteopathy, & Chiropractic	\$46.44

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b. If the Wages were fixed by the hour and the victim did not work the same number of hours each week, or if the victim was paid on a piecework or commission basis, the weekly wage shall be computed by averaging the amounts that the victim was paid during his last four completed pay periods prior to the criminally injurious conduct and converting that amount to a weekly basis using a method consistent with 72-419(1)-(3); provided that, if the victim was employed for less than four (4) pay periods before the criminally injurious conduct, the average shall be computed based upon the time period that he worked. ()

c. If none of the above methods are applicable, the weekly wage shall be computed in a manner consistent with the above methods. ()

09. Treating Physician. A victim may choose his own treating physician. If, after filing an Application for Compensation, a victim changes physicians without prior approval of the Commission, or if, without prior approval of the Commission, he seeks treatment or examination by a physician to whom he was referred by his treating physician, the Commission may deny payment for such treatment or examination. ()

10. Overpayment. If the Commission erroneously makes payments, the Commission may reduce future payments by an amount equal to the overpayment or request a refund when overpayments are made to either the claimant or the provider. ()

11. Weekly Compensation Benefits If Victim Employable But Not Employed. If a victim is qualified under Section 72-1019(7)(a), Idaho Code, the following provisions apply: ()

a. If at the time of the injurious conduct the victim was receiving unemployment benefits and as a result of that conduct the victim becomes ineligible for those benefits, the claimant's weekly benefits under the Crime Victims Compensation Act shall be the lesser of one hundred fifty dollars (\$150) or his weekly benefit amount under the Employment Security Law. ()

b. If at the time of the criminally injurious conduct the victim was unemployed, but scheduled to begin employment on a date certain and if he was unable to work for one (1) week as a result of that conduct, weekly benefits under the Crime Victims Compensation Act shall be the lesser of one hundred fifty dollars (\$150) or two-thirds (2/3) of the amount that he would have earned at his scheduled employment, and those benefits shall be payable beginning on the date that his employment was scheduled to begin. ()

c. If prior to the criminally injurious conduct the victim was performing necessary household duties which he is disabled from performing as a result of that conduct and it is necessary to employ a person who does not reside in the victim's house to perform those duties, the victim shall receive weekly benefits under the Crime Victims Compensation Act equal to the amount paid to the person so employed, but not exceeding one hundred fifty dollars (\$150) per week. ()

d. In other circumstances, the Commission may award an amount it deems appropriate. ()

12. Reimbursement for Transportation Expenses. If the claimant utilizes a private vehicle, reimbursement shall be at the mileage rate allowed by the State Board of Examiners for state employees. Reimbursement shall be provided only if services are not available in the local area and is limited to one (1) round trip per day. The claimant shall not be reimbursed for the first fifteen (15) miles of any round trip, nor for traveling any round trip of fifteen (15) miles or less. Such distance shall be calculated by the shortest practical route of travel. The mileage reimbursement amount shall be credited to the medical benefit. ()

13. Payment of Bills. Bills for treatment and sexual assault forensic examinations must be submitted within two (2) years from the date of treatment or the date of eligibility, whichever is later, to be compensable. ()

012. HEARING PROCEDURES.

01. Request for Hearing. If a Request for Hearing is filed, an informal hearing shall be held. The Commission may conduct the hearing or it may assign the matter to a Commissioner or Referee. If the matter is assigned to a Commissioner or a Referee, the Commissioner or Referee shall submit recommended findings and

decision to the Commission for its review. ()

02. Recommendations. If the Commission does not approve the recommendations of a member or Referee, the Commission may: ()

a. Review the record and enter its own findings and decision; ()

b. Conduct another informal hearing and issue a decision based upon the record of both hearings; or ()

c. Assign the matter to another member or Referee to conduct another informal hearing and make recommendations pursuant to Subsection 012.01 above based upon the record of both hearings. ()

03. Notice of Hearing. The Commission shall give the claimant at least ten (10) days' advance written notice of the time and place of hearing and of the issues to be heard, either by personal service or certified mail. Service by mail shall be deemed complete when a copy of such notice is deposited in the United States post office, with postage prepaid, addressed to a party at his last known address as shown in the records and files of the Commission. Evidence of service by certificate or affidavit of the person making the same shall be filed with the Commission. ()

04. Transcript of Hearing. All hearings shall be tape-recorded. In addition, the Commission may arrange for a stenographic or machine transcription of any hearing. ()

05. Record. At the hearing the Application for Compensation filed by the claimant and any other documents in the Commission's file that contain information relevant to the issues in the case shall be admitted into the record. Such documents shall be marked for identification and the record shall specify that those documents are admitted. The Commission, member, or Referee conducting the hearing shall give those documents the weight that is appropriate under the circumstances of the particular case. ()

06. Evidence. At the hearing; after the claimant has presented his evidence, the Commission, or the Commissioner or Referee conducting the hearing shall allow an employee of the Commission to present evidence. After the presentation of evidence by an employee of the Commission, the Commission, or the Commissioner or Referee conducting the hearing may, in its or his discretion, allow any other person to testify. ()

07. Finality of Decision. After a hearing, the decision of the Commission shall be final and conclusive as to all matters adjudicated. Within twenty (20) days from the date that such decision is issued, the claimant may file a Motion for Reconsideration or the Commission may reconsider the matter on its own motion. ()

08. Crime Victim's Compensation Program Review. At the request of the claimant or on its own motion the Crime Victim's Compensation Program may review and amend any final order or award, within three (3) years of the date of issue of such order or award: ()

a. If there is a change in circumstances that affects the claimant's entitlement to benefits; ()

b. To correct a manifest injustice; ()

c. If the order or award is based upon facts which were misrepresented or that were not fully disclosed; or ()

d. To comply with the annual review requirements of Section 72-1021, Idaho Code. ()

09. Subpoenas. Subpoenas shall be served in the manner provided by the Idaho Rules of Civil Procedure. Witness fees and mileage shall be in the amounts provided by the Idaho Rules of Civil Procedure and the Claimant shall pay the fees of any witness who is subpoenaed to testify in his behalf. ()

013. -- 999. (RESERVED)

**17.11.01 – ADMINISTRATIVE RULES OF PEACE OFFICER AND
DETENTION OFFICER TEMPORARY DISABILITY ACT**

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 72-1104, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is “Administrative Rules of Peace Officer and Detention Officer Temporary Disability Act,” IDAPA 17, Title 11, Chapter 01. ()

02. Scope. This chapter includes the Industrial Commission's rules regarding the Peace Officer Temporary Disability Fund. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

The definitions set forth at Section 72-1103, Idaho Code apply to this chapter. ()

011. RULE GOVERNING APPLICATIONS FOR REIMBURSEMENT FROM THE PEACE OFFICER AND DETENTION OFFICER TEMPORARY DISABILITY FUND.

01. Eligibility. An employer who has paid the full base salary due to a peace officer or detention officer, as defined in Section 72-1103, Idaho Code, may apply for reimbursement from the Peace Officer and Detention Officer Temporary Disability Fund under the provisions of Section 72-1104, Idaho Code, for the amount of that salary not covered by the workers' compensation income benefit payments remitted to the employer during the time that such officer is: ()

a. Temporarily incapacitated and unable to perform employment duties; ()

b. Is otherwise eligible to receive workers' compensation benefits; and ()

c. Is one whose incapacitating injury was incurred in the performance of employment duties on or after July 1, 2008, either: ()

i. When responding to an emergency; or ()

ii. When in the pursuit of an actual or suspected violator of the law; or ()

iii. The injury was caused by the actions of another person after July 1, 2012. ()

02. Application. An employer eligible to seek reimbursement from the Peace Officer and Detention Officer Temporary Disability Fund shall make application on the form provided by the Commission, available online. ()

03. Payments. Payments to employers requesting reimbursement from the Peace Officer and Detention Officer Temporary Disability Fund shall be made within thirty (30) days of receipt of an approved request for reimbursement, subject to the availability of money in that fund. ()

04. Disputes. Disputes regarding eligibility for reimbursement from The Peace Officer and Detention Officer Temporary Disability Fund will be decided by the Commission upon written request by the employer. There is no appeal from the reimbursement dispute decisions of the Commission under this section. Disputes regarding eligibility of an injured peace officer or detention officer for workers' compensation benefits, including the continuation of salary benefit set out in Section 72-1104, Idaho Code, will be decided in accordance with the Commission's current rules and procedures governing disputes in all other workers' compensation claims. ()

012. -- 999. (RESERVED)

IDAPA 21 – IDAHO DIVISION OF VETERANS SERVICES

DOCKET NO. 21-0000-1900

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and full force and effect upon adoption of the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 65-202; 65-204; 65-506, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and 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 the change:

This pending rule adopts and re-publishes the following existing and previously approved and codified chapter promulgated as proposed rules under this docket number under IDAPA 21, rules of the Idaho Division of Veterans Services:

IDAPA 21

- 21.01.06, *Rules for the Enforcement of the Veteran's Preference in Public Employment*

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The complete text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin, [Vol. 19-6SE, pages 4376 – 4383](#). These rules provide guidance for the enforcement of Veteran's preference in public employment. These rules provide recourse for an applicant who has reason to believe his/her Veteran's status wasn't considered during the hiring process. It provides a clear path for both public employers and applicants to follow for the resolution of a Veteran's Preference complaint prior to the court system becoming involved. Minor technical corrections were made for clarity.

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.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kevin Wallior (208) 780-1308.

Dated this 10th day of October, 2019.

Kevin Wallior
Management Assistant
Idaho Division of Veterans Services
351 Collins Road
Boise, ID 83702
Phone: (208) 780-1308
Fax: (208) 780-1301

THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule 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 65-202, 65-204, and 65-506, 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 21, rules of the Idaho Division of Veterans Services:

IDAPA 21

- 21.01.06, *Rules for the Enforcement of the Veteran's Preference in Public Employment*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule 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 provide guidance for the enforcement of Veteran's preference in public employment. These rules provide recourse for an applicant who has reason to believe his/her Veteran's status wasn't considered during the hiring process. It provides a clear path for both public employers and applicants to follow for the resolution of a Veteran's Preference complaint prior to the court system becoming involved.

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 Kevin Wallior (208) 780-1308.

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.

<p>THE FOLLOWING IS THE TEXT OF DOCKET NO. 21-0000-1900</p>
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21.01.06 – RULES FOR THE ENFORCEMENT OF THE VETERAN’S PREFERENCE IN PUBLIC EMPLOYMENT

000. LEGAL AUTHORITY.

Section 65-506, Idaho Code, authorizes and directs the Idaho Division of Veterans Services to issue rules for the enforcement of Title 65, Chapter 5, Idaho Code. (3-30-07)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 21.01.06, “Rules for the Enforcement of the Veteran’s Preference in Public Employment.” (3-30-07)

02. Scope. These rules contain procedures public employers may implement for an internal process which must be exhausted prior to a petitioner gaining access to the courts to contest a public employer’s application of the veteran’s preference in public employment. (3-30-07)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Definitions Generally. Except where supplemented by the definitions in Section 010 of these rules, the definitions in Section 65-502, Idaho Code, apply to terms used in these rules. (3-30-07)

02. Petitioner. Petitioner means a person who alleges the denial of a preference. (3-30-07)

03. Preference. Preference means a right or benefit granted to the petitioner under Title 65, Chapter 5, Idaho Code. (3-30-07)

04. Presiding Officer. The individual or individuals, as more particularly described in Subsection 103.01 of these rules, appointed by the public employer executive to preside at a hearing. (3-30-07)

05. Public Employer Executive. Public employer executive means the individual or body of individuals in whom the ultimate legal authority of the public employer is vested by any provision of law. (3-30-07)

011. -- 099. (RESERVED)

100. HEARING REQUESTS.

01. Written Requests. A petitioner must make a hearing request in writing to the public employer executive. A written hearing request must be hand delivered to the public employer executive or deposited in the United States mail. Hearing requests must contain the following information: ()

a. The petitioner’s full name and complete mailing address. (3-30-07)

b. A request for either a telephonic or a face-to-face hearing. The petitioner shall provide the telephone number where a telephonic hearing may be conducted. (3-30-07)

c. The position for which the petitioner applied for appointment. (3-30-07)

d. A brief statement of the petitioner’s basis of eligibility for a preference, as set forth in Section 65-503, Idaho Code. (3-30-07)

e. A brief statement of the issues petitioner proposes to raise at the hearing. (3-30-07)

f. Any dates or times that the petitioner or the petitioner’s attorney cannot be available for a hearing. (3-30-07)

02. Timely Requests. The public employer executive must receive hearing requests by 5 p.m. at the offices of the public employer executive no later than thirty-five (35) days following the date of the alleged denial of a preference. The date of the alleged denial of a preference for the purpose of calculation of time under Subsection 100.02 of these rules, shall be the date of issuance of a notice to the petitioner that the petitioner was not awarded a position or, if no notice is issued, the date petitioner becomes aware that he was not awarded a position. (3-30-07)

03. Request Withdrawal. A petitioner may withdraw a hearing request at any time. (3-30-07)

04. Disposition of Case Without a Hearing. Any hearing request may be resolved without a hearing on the merits of the request by stipulation, settlement, motion to dismiss, summary judgment, default, or for lack of jurisdiction. The public employer executive must dismiss an appeal that is not timely filed for lack of jurisdiction. (3-30-07)

101. HEARING NOTICES.

01. Notification of Hearing. Upon timely receipt of a hearing request, the public employer executive shall notify petitioners of the time and date of the hearing and the presiding officer at the hearing not less than seven (7) days prior to the hearing. The hearing notice shall specify whether the hearing will be conducted by telephone or face-to-face. If the hearing is to be face-to-face, the hearing notice shall specify the location of the hearing. The hearing notice shall stipulate an address for the filing of documents with the presiding officer. ()

02. Location of Hearings. Hearings may be conducted by telephone or face-to-face in the discretion of the public employer executive, except that where the petitioner or another participant in the hearing would be denied the opportunity to participate in the hearing if held by telephone, the hearing will be face-to-face. Face-to-face hearings will be held in the city in which the position the petitioner applied for appointment is located, unless otherwise agreed upon by the parties. (3-30-07)

03. Hearing Date. The public employer executive shall conduct hearings within thirty-five (35) days of receipt of the hearing request. The public employer executive may extend the hearing date for an additional thirty-five (35) days for good cause shown by the public employer executive or the petitioner. (3-30-07)

102. PREHEARING PROCEDURE.

01. Discovery. Prehearing discovery is limited to obtaining the names of witnesses and copies of documents the opposing party intends to offer as exhibits. The presiding officer at the hearing may order production of the names of witnesses and copies of documents after receiving a written request for an order of production. The presiding officer shall issue an order of production as needed to ensure the orderly conduct of the hearing. (3-30-07)

02. Subpoenas. If the public employer executive holds statutory subpoena power applicable to hearings under these rules, the presiding officer may issue subpoenas for witnesses or documents. (3-30-07)

03. Briefing. The presiding officer may require briefs to be filed by the parties and establish a reasonable briefing schedule. (3-30-07)

04. Filing of Documents. All documents requested by a party to be entered as exhibits shall be filed with the presiding officer in person or by first class mail with a copy provided to the opposing party. Service by mail is complete when the document, properly addressed and stamped, is deposited in the United States mail. A certificate showing delivery to all parties must accompany all documents when they are filed with the presiding officer. (3-30-07)

103. PROCEDURE AT HEARING.

01. Presiding Officer at Hearing. In the discretion of the public employer executive, the public employer executive, one (1) or more members of the public employer executive, or one (1) or more hearing officers will be the presiding officer at the hearing. (3-30-07)

02. Representation. The petitioner may represent himself. Either party may be represented by legal counsel, at the party's own expense. Persons not authorized to practice law in the state of Idaho shall not represent parties. (3-30-07)

03. Evidence. The presiding officer may exclude evidence that is irrelevant, immaterial, incompetent, unduly repetitious, excludable on constitutional or statutory grounds, or protected by legal privilege. Hearsay

evidence may be admitted if it is relevant to the grant or denial of the preference and is sufficiently reliable that prudent persons would commonly rely on it in the conduct of their affairs or if the hearsay evidence corroborates competent evidence. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Notice may be taken of judicially cognizable facts or general, technical, or scientific facts by the presiding officer on its own motion or on motion of a party. (3-30-07)

04. Hearing Record. The presiding officer shall make a record of the hearing consisting of: an audio recording of the hearing, except in instances where the presiding officer requires a different method of recording the hearing; and, exhibits and other items of evidence presented at the hearing. A party may request a copy of the hearing record, at the party's own expense. ()

104. FINAL ORDER.

01. Order of the Presiding Officer. The presiding officer must issue a written order not more than thirty-five (35) days from the date of the hearing that includes: ()

- a. Specific findings on all major facts at issue; (3-30-07)
- b. A reasoned statement in support of the decision; (3-30-07)
- c. All other findings and recommendations of the presiding officer; (3-30-07)
- d. A preliminary decision finding that a preference was or was not applied by the public employer as required by Title 65, Chapter 5, Idaho Code; and (3-30-07)
- e. The procedure and time limits for filing a request for a review by the public employer executive, if available. (3-30-07)

02. Review by the Public Employer Executive.

- a. If the presiding officer at the hearing was a hearing officer or less than a quorum of the public employer executive, either party may request a review by a quorum of the public employer executive not later than seven (7) days from the date the presiding officer mailed the order of the presiding officer. The request must identify all legal and factual bases of disagreement with the order of the presiding officer. (3-30-07)
- b. Upon receipt of the request for a review hearing, the public employer executive may: (3-30-07)
 - i. Issue a written order affirming the decision of the public employer executive without a hearing; or, (3-30-07)
 - ii. Issue a notice for a review hearing complying with the provisions of Section 101 of these rules. (3-30-07)
- c. If the public employer executive issues a notice for a review hearing, the notice will establish a schedule for briefing, if allowed, and specify whether oral argument will be heard on the review. (3-30-07)
- d. The public employer executive shall conduct review hearings within thirty-five (35) days of receipt of the review request. (3-30-07)
- e. The public employer executive shall issue a written order not more than thirty-five (35) days from the date of the review hearing containing: ()
 - i. Specific findings on all major facts at issue; (3-30-07)
 - ii. A reasoned statement in support of the decision; (3-30-07)

- iii. All other findings and recommendations of the public employer executive; and (3-30-07)
- iv. A finding that a preference was or was not applied by the public employer as required by Title 65, Chapter 5, Idaho Code. (3-30-07)

03. Order of the Public Employer Executive.

- a. The following shall be orders of the public employer executive: (3-30-07)
 - i. The order of the presiding officer if the presiding officer is an individual serving as the public employer executive or a quorum of the public employer executive. The date of exhaustion of the appeal process shall be the date such order of the presiding officer is issued. (3-30-07)
 - ii. The order of the presiding officer if the presiding officer is a hearing officer or less than a quorum of the public employer executive and the public employer executive fails to hold a review hearing after a timely request or fails to issue an order within the required time after holding a review hearing. The date of exhaustion of the appeal process shall be the last day the public employer executive was required by these rules to hold a hearing or to issue an order. (3-30-07)
 - iii. The written order of the public employer executive following a review hearing. The date of exhaustion of the appeal process shall be the date such order of the public employer executive is issued. (3-30-07)
 - iv. The initial hiring determination of the public employer executive if the public employer executive fails to hold a hearing as required by these rules or if the presiding officer fails to issue an order after holding a hearing. The date of exhaustion of the appeal process shall be the last day the public employer executive was required by these rules to hold a hearing or to issue an order. (3-30-07)

- b. Orders of the public employer executive shall set forth the procedure and time limits for filing an appeal to the district court under Section 65-506, Idaho Code. (3-30-07)

105. -- 200. (RESERVED)

201. ALTERNATIVE PROCESSES.

A public employer may publish an alternative internal review process for challenges to the application of Title 65, Chapter 5, Idaho Code, if such process: (3-30-07)

01. Appeal Deadline. Establishes a deadline of thirty-five (35) days for the filing of appeals alleging the denial of a preference. (3-30-07)

02. Notice of Process. Includes written notice to applicants for employment of the existence of the process and how to obtain a copy of the process. Publication of the process in a rule or ordinance of the public employer shall be written notice to applicants for employment. (3-30-07)

03. Opportunity to Be Heard. Provides an opportunity in the internal review for the petitioner to submit argument, evidence, and witnesses and to cross-examine the public employer executive's witnesses. (3-30-07)

04. Record of Process. Produces a record of the internal review process that is available to the district court. (3-30-07)

05. Written Final Order. Requires a written final order of the public employer containing: (3-30-07)

- a. Specific findings on all major facts at issue; (3-30-07)
- b. A reasoned statement in support of the decision; and (3-30-07)
- c. A finding that a preference was or was not applied by the public employer as required by Title 65, Chapter 5, Idaho Code. (3-30-07)

06. Notice of Appeal Rights. Includes written notice to petitioners at the conclusion of the internal review of the procedure and time limits for filing an appeal to the district court under Section 65-506, Idaho Code. (3-30-07)

202. -- 300. (RESERVED)

301. APPEAL TO DISTRICT COURT.

Petitioners must exhaust an appeal process implemented under these rules prior to appeal to district court. If a public employer implements an appeal process under these rules, petitioner may appeal the order of the public employer executive to a district court of the state of Idaho within one hundred eighty (180) days of the exhaustion of the appeal process. If a public employer has not implemented an appeal process under these rules, the petitioner may file an action directly in a district court of the state of Idaho within thirty-five (35) days of the alleged denial of a preference. (3-30-07)

302. TRANSFER OF HEARING RECORD TO DISTRICT COURT.

The public employer shall submit a complete copy of the hearing record to a district court of the state of Idaho following the filing of an appeal and payment by the appealing party of the costs of duplicating and preparing the hearing record for submission, including labor costs. The opposing party may obtain a copy of the transcript at a cost not exceeding the cost of duplicating the hearing record submitted to the district court. (3-30-07)

303. -- 999. (RESERVED)

IDAPA 28 – DEPARTMENT OF COMMERCE

DOCKET NO. 28-0000-1900

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and full force and effect upon adoption of the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-4702(2), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and 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 the change:

This pending rule adopts and re-publishes the following chapters promulgated as a proposed rule under this docket number under IDAPA 28, rules of the Department of Commerce:

IDAPA 28

- 28.02.03, *Department of Commerce Grant Program Rules*
- 28.04.01, *Rules Governing the Idaho Reimbursement Incentive Act*

This pending rule vacates the following proposed rules previously promulgated as part of the omnibus proposed rulemaking under IDAPA 28, rules of the Department of Commerce:

- **(VACATED)** 28.02.03, *Rules of the Idaho Regional Travel and Convention Grant Program*
- **(VACATED)** 28.02.04, *Idaho Gem Grant Program*
- **(VACATED)** 28.02.05, *Rural Community Block Grant Program (RCBG)*
- **(VACATED)** 28.02.07, *Rules Governing the Administration of the IGEM Grant Program*
- **(VACATED)** 28.03.01, *Rules of the Idaho Opportunity Fund*

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The complete text of these proposed rules was published in the June 19, 2019 Idaho Administrative Bulletin, [Vol. 19-6SE, pages 5096–5125](#).

The pending rulemaking being adopted under re-designated IDAPA 28.02.03, “Department of Commerce Grant Program Rules,” combines the previously approved and codified rules from the following Department of Commerce grant programs into this new chapter:

- 1) IDAPA 28.02.03, “Idaho Regional Travel and Convention Grant Program”
- 2) IDAPA 28.02.04, “Idaho Gem Grant Program”
- 3) IDAPA 28.02.05, “Rural Community Block Grant Program (RCBG)”
- 4) IDAPA 28.02.07, “Rules Governing Administration of the IGEM Grant Program”
- 5) IDAPA 28.03.01, “Idaho Opportunity Fund”

As the lead economic development agency for the state of Idaho, the mission of the Idaho Department of Commerce is to foster a business-friendly environment to aid in job creation, support existing companies, support tourism, and strengthen Idaho communities. The adoption of the pending rule will ensure the continued support for Idaho businesses and tourism from the Idaho Department of Commerce.

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.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Ewa Szewczyk, (208) 334-2470.

Dated this 16th day of October, 2019.

Ewa Szewczyk
Grants & Contracts Manager
Idaho Commerce
700 W. State Street
Boise, Idaho 83702
Phone: (208) 334-2470
Fax: (208) 334-2631

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

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 Section 67-4702(2), 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 28, rules of the Department of Commerce:

IDAPA 28

- 28.02.03, *Rules of the Idaho Regional Travel and Convention Grant Program*
- 28.02.04, *Idaho Gem Grant Program*
- 28.02.05, *Rural Community Block Grant Program (RCBG)*
- 28.02.07, *Rules Governing the Administration of the IGEM Grant Program*
- 28.03.01, *Rules of the Idaho Opportunity Fund*
- 28.04.01, *Rules Governing the Idaho Reimbursement Incentive Act*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule 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. As the lead economic development agency for the State of Idaho, the mission of the Idaho Department of Commerce is to foster a business-friendly environment to aid in job creation, support existing companies, support tourism, and strengthen Idaho communities. The temporary adoption of the rule will ensure the continued support for Idaho businesses and tourism from the Idaho Department of Commerce.

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 Ewa Szewczyk at (208) 334-2470.

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.

<p>THE FOLLOWING IS THE TEXT OF DOCKET NO. 28-0000-1900</p>
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28.02.03 – DEPARTMENT OF COMMERCE GRANT PROGRAM RULES

000. LEGAL AUTHORITY.

These rules have been adopted pursuant to Sections 67-4702, 67-4703, 67-4715, 67-4717, 67-4718, 67-4729, and 67-4733, Idaho Code. ()

001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 28.02.03, “Department of Commerce Grant Program Rules.” ()

02. **Scope.** These rules implement the following Department of Commerce grant programs: 1) Idaho Regional Travel and Convention Grant Program; 2) Idaho Gem Grant Program; 3) Rural Community Investment Fund; 4) IGEM Grant Program; 5) Idaho Opportunity Fund; and 6) Idaho Community Development Block Grant Program. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Department.** The Idaho Department of Commerce as set forth in Section 67-4701, Idaho Code. ()

02. **Program Guidelines.** Department of Commerce grant programs are administered in accordance with applicable federal and state statutes, these rules, grant resources available on the Department's website, and written grant agreements entered into between the successful applicant and the Department. Collectively these laws, rules, handbooks, grant resources, and grant agreements are referred to as “program guidelines” throughout these rules and each may be enforced by the Department. ()

011. -- 049. (RESERVED)

SUBCHAPTER A - GENERAL GRANT PROGRAM REQUIREMENTS

050. GENERAL GRANT PROGRAM REQUIREMENTS.

01. **Application Procedure.** All applicants must meet eligibility requirements specified in program guidelines. Eligible applicants must submit a completed application to the Department and meet the requirements specified in program guidelines prior to the application deadline specified therein. ()

02. **Review of Applications.** Unless otherwise specified, all grants will be reviewed, ranked, and selected by the Department and relevant council members if applicable, in accordance with selection criteria specified in program guidelines. All applicants will be notified of their application status in a reasonable timeframe after the application deadline. ()

03. **Grant Agreement.** All applicants selected for funding must enter into a written grant agreement with the Department. The grant will take effect upon the date of award specified in the grant agreement and grant monies cannot be expended until that date. ()

04. **Amendments to Grant Agreements.** Extensions and amendments to grant agreements are only permitted if agreed to in writing and approved by the Department or applicable council members. ()

05. **Grant Acknowledgment.** If required, projects funded by the Department must acknowledge said program as outlined in the program guidelines. ()

06. **Reporting Requirements.** As specified in program guidelines, the grantee must provide regular progress reports to the Department to demonstrate progress toward planned outcomes, as well as a final report demonstrating the outcomes achieved. ()

07. **Termination of Funding.** The grantee may only use the grant funds in accordance with program guidelines. If at any time the Department becomes aware of a grantee's noncompliance with program guidelines, or inappropriate or illegal use of grant funds, the Department may terminate the agreement. The Department may require an audit of grant funds. The Department may further terminate a grant if the project loses viability or is ()

unlikely to meet the intent of the original application. ()

08. Limitation on Use of Funds. Program guidelines detail ineligible uses of funds. In addition, funds cannot be used as follows: ()

a. Political activities. For political purposes or to engage in lobbying or other partisan political activities. ()

b. Religious activities. For the construction, rehabilitation or operation of active churches or religious structures used for religious purposes. ()

c. Conflict of interest. If at any time the Department and/or any council member(s) becomes aware of an apparent or potential conflict of interest between a grantee and a private entity which may influence grant funds, the Department may request a meeting with the grantee's representatives. The Department may, at that meeting, terminate the grant if an inappropriate conflict of interest is found. ()

09. Rural Community. Communities that are generally less than twenty-five thousand (25,000) in population. ()

10. Cost Reimbursable. Department grants are cost reimbursable. Grant payment procedures will be established in the program guidelines. The Department will reimburse allowable costs up to the maximum grant amount for which both receipts and matching funds documentation have been provided. The grantee is responsible for any discrepancies in documentation. ()

051. -- 099. (RESERVED)

100. IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM.

01. Program Intent. The intent of this program is to provide grant funds to non-profit, incorporated organizations which have in place a viable travel or convention promotion program, or both, in their area of operation. Preference is given to programs with a primary focus of promoting overnight visitation in Idaho. Funds may be used for tourism marketing which has a positive economic impact to the state of Idaho including, but not limited to, the promotion of accommodations, recreational areas, events, conferences, food and beverage, tourism services, culture, attractions, and transportation. ()

02. Eligible Applicants. Non-profit entities with a focus on tourism. Entities must provide proof of non-profit status including: State of Idaho Certificate of Incorporation, Articles of Incorporation from the Secretary of State, or a letter of determination from the Internal Revenue Service, and Notice of Employer Identification Number assigned by the Internal Revenue Service. ()

03. Review of Applications. The Idaho Travel Council will review applications in accordance with selection criteria specified in program guidelines. ()

04. Matching Funds. This grant requires a cash match of twelve and one-half percent (12.5%) of the amount awarded, with further requirements specified in program guidelines. ()

05. Distribution of Funds. The Department will reimburse funds to the grantee upon submission and review of complete documentation of funds expended. ()

06. Eligible Expenses. ()

a. Program intent. Eligible projects under the Regional Travel and Convention Grant Program must be consistent with the legislative declaration of policy in Title 67, Chapter 47, Idaho Code, and the program intent. Programs that are eligible for consideration must fall under the basic definition of travel or convention promotion. ()

b. Administrative expense. The following administrative and overhead costs are allowable: ()

i. Wages and benefits. Wages and benefits of one (1) designated grant administrator for time directly related to the task of grant administration. Other employee wages and benefits incurred in the execution of the grant program may be used as cash match with documentation. ()

ii. Overhead. Reasonable, apportioned overhead costs of the grantee organization required to execute the grant program must be approved by the Idaho Travel Council. The Department will recommend preferred apportionment methods. ()

07. Ineligible Expenses. Unless specified otherwise in the program guidelines, this grant program will not fund: ()

a. The day-to-day, administrative expenses of organizations that have a travel or convention promotion element; ()

b. Projects that have alternative funding sources (for example, regular Chamber of Commerce budgets) or that have been funded previously with the agency's own funds; or ()

c. The promotion of local events; or ()

d. No expenses related to grant writing, or grant application are eligible. ()

08. Audit Requirement. Grantees who receive one hundred thousand dollars (\$100,000) or more in grant funds will have an audit performed by a Certified Public Accountant and submitted to the Department within sixty (60) days following the close of the grant cycle. ()

101. -- 149. (RESERVED)

150. IDAHO GEM GRANT (IGG) PROGRAM.

01. Program Intent. The intent of this program is to fund community development projects of rural communities for the purpose of improving the local economy, retaining or creating jobs, promoting the community for economic development and tourism, and assisting business expansion and diversification. ()

02. Eligible Applicants. Idaho rural communities under ten thousand (10,000) persons and other Idaho rural communities at the discretion of the Director of the Department of Commerce are eligible to apply for IGGs up to a maximum of fifty thousand dollars (\$50,000). IGGs to city and county governments may be administered by their designees as established by formally adopted resolutions. ()

03. Review of Applications. The Department's Director, in his sole discretion, makes all IGG awards. The Director may make grant awards at any time the Director determines it necessary to take advantage of special opportunities that further the primary objectives of the IGG Program. ()

04. Matching Funds. This grant requires a minimum of twenty percent (20%) matching funds of either cash or in-kind donations for the total amount of IGG funds received. Matching funds can be comprised of any combination of cash and in-kind donations and must meet conditions specified in the program guidelines. ()

05. Distribution of Funds. Grantees receive payment of IGG funds on a cost reimbursement basis. Grant payment procedures will be established in the program guidelines. The Department will reimburse allowable costs up to the maximum grant amount for which both receipts and matching funds documentation have been provided. The grantee is responsible for any discrepancies in documentation. ()

06. Eligible Expenses. Eligible expenses are specified in program guidelines. ()

07. Ineligible Expenses. Funds may not be used for: ()

a. Payroll costs for city, county, development corporation or other community agencies. ()

b. Real property acquisition. Construction, rehabilitation, or operation of schools, general government facilities, jails or state facilities. ()

c. Administrative costs. Expenses related to administering the grant will not be reimbursable to the grantee from grant funds. ()

08. Bid Process. Grantees must contact a minimum of three (3) vendors for quotes or bids for the purchase of goods or services over twenty-five thousand dollars (\$25,000). Prior to reimbursement for such costs, the following information must be submitted to the Department: ()

a. Item or service purchased. A detailed description of the item or service purchased or to be purchased. ()

b. Bid verification. Written documentation of three (3) or more businesses or vendors contacted by IGG grantees for bids or quotes listing the businesses or vendors contacted and indicating their response, and a list of all businesses or vendors contacted whether or not a response was received. ()

c. Reasons for selection. Grantees justification for the business or vendor selected. ()

151. -- 199. (RESERVED)

200. RURAL COMMUNITY INVESTMENT FUND (RCIF).

01. Program Intent. This grant provides funds to rural areas in support of economic expansion and job creation, as defined per the program guideline which includes the RCIF Grant Application and Manual. ()

02. Eligible Applicants. Applicants for the Idaho Rural Community Block Grants are as follows: ()

a. City applicants. Rural cities are those generally less than twenty-five thousand (25,000) in population. Cities contiguous to large cities are not eligible to apply. ()

b. County applicants. Counties with less than twenty-five thousand (25,000) population. However, any county may apply for unincorporated communities. ()

c. Indian tribes located in Idaho may apply if the project site is located on reservation land and within a community of less than twenty-five thousand (25,000) population. ()

03. Review of Applications. Presentations must be made by key elected officials of the applicant to the Department's Economic Advisory Committee (EAC) on the need for the project, the local commitment to the project, the economic impact of the project on the community, and any additional information that should be given special consideration. Applications will be reviewed and ranked on criteria specified in the RCIF Grant Application and Manual. The EAC may recommend standby projects to be funded if enough funds become available at a later time. ()

04. Eligible Expenses. Eligible expenses are specified in the RCIF Grant Application and Manual. ()

05. Ineligible Expenses. Any activity not authorized in the RCIF Grant Application and manual is ineligible to receive RCBG funds, including: ()

a. General conduct of government. Assistance to buildings, or portions thereof, used predominantly for the general conduct of government. Such buildings include, but are not limited to, city halls, courthouses, jails, police stations, state or local government office buildings, and other building used for general government administration affairs. Also ineligible are school buildings, school administration offices, and university and college vocational-technology facilities. ()

b. Local government expenses. Expenses to carry out the regular responsibilities of the unit of general local government are not eligible for assistance with RCIF. ()

c. Equipment. The purchase of equipment, fixtures, motor vehicles, furnishings or other personal property, which is not an integral structural fixture, is generally ineligible. ()

d. Operating and maintenance expenses. ()

201. -- 249. (RESERVED)

250. IDAHO GLOBAL ENTREPRENEURIAL MISSION (IGEM) GRANT PROGRAM.

01. Program Intent. The IGEM Grant Program funds commercialization grants supporting University and industry research partnerships for the purpose of enhancing technology transfer and commercialization of research and technologies developed at the Universities to create high-quality jobs and new industries in the private sector in Idaho. ()

02. Eligible Applicants. Idaho's public research universities: Boise State University, Idaho State University, and University of Idaho. ()

03. Industry Partner. A domestic or foreign entity that designs, produces, or sells goods or services or that contractually agrees to undertake such acts in connection with the technologies licensed or otherwise transferred to the entity by a University, and that is partnered with an Eligible Applicant. ()

04. Review of Applications. In selecting IGEM awards, the IGEM Council will give greater weight to proposals that partner with Idaho-based entities. ()

05. Matching Funds. This grant requires a monetary or in-kind contribution from the industry partner as outlined in program guidelines. ()

06. Commercialization Revenue. Revenue generated through the commercialization of university intellectual property rights in a work authored or an invention conceived or first reduced to practice in the performance of an IGEM grant award are distributed as outlined in Section 67-4731, Idaho Code. ()

251. -- 299. (RESERVED)

300. IDAHO OPPORTUNITY FUND.

01. Program Intent. The Idaho Opportunity Fund provides funding for public costs incurred with the purpose to retain, expand or attract jobs, which include: ()

a. Construction of or improvements to new or existing water, sewer, gas or electric utility systems for new or existing buildings to be used for industrial or commercial operations; ()

b. Flood zone or environmental hazard mitigation; or ()

c. Construction, upgrade or renovation of other infrastructure related items including, but not limited to, railroads, broadband, parking lots, roads or other public costs that are directly related to specific job creation or expansion projects. ()

02. Review of Applications. The Director of the Department may, in his sole discretion, award Opportunity Fund grants to local governments in accordance with program guidelines. ()

03. Matching Funds. This grant requires an allowable local match. Allowable match includes those costs which are allowable within the Opportunity Fund and are provided by the local government as cash, in-kind services, fee waivers (such as development impact fees), donation of assets, the provision of infrastructure or a

combination thereof. The match must represent a material commitment from the local government that is commensurate with the local government's financial condition. The Director of the Department has the authority to approve other forms of local match or waive the local match requirements. ()

04. Distribution of Funds and Eligible Applicants. Funds will be disbursed from the Opportunity Fund to local governments as defined in the Local Government Grant Agreement and after the local government has demonstrated that the Grantee Business has complied with the terms of the Company Performance Agreement. ()

05. Grant Agreements. Local Government Grant Agreements will be entered into between the Department and one (1) or more local governments, and contain the provisions specified in the program guidelines. In addition, Company Performance Agreements will be entered into between one (1) or more local governments and a Grantee Business, and containing provisions outlined in the program guidelines. ()

301. -- 349. (RESERVED)

350. IDAHO COMMUNITY DEVELOPMENT BLOCK GRANT (ICDBG)

01. Incorporation by Reference. The Department of Commerce adopts and incorporates by reference the CDBG Procedures Guide, CDBG Application Handbook, the CDBG Grant Manual, 24 CFR Part 570, and the most current Annual Action Plan as rules for the administration of the Idaho Community Development Block Grant. ()

02. Purpose. The rules incorporated by reference in (01) relate to the scope and procedures for the implementation of the Idaho Community Development Block Grant Program. ()

351. -- 999. (RESERVED)

28.04.01 – RULES GOVERNING THE IDAHO REIMBURSEMENT INCENTIVE ACT

000. LEGAL AUTHORITY.

These rules are promulgated under the legal authority of Section 67-4744, Idaho Code. (4-11-15)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 28.04.01, “Rules Governing the Idaho Reimbursement Incentive Act.” (4-11-15)

02. Scope. These rules implement the Idaho Reimbursement Act, including application and pre-application process, formation of incentive agreements with the business entity, reimbursement to the business entity through an earned tax credit, annual reporting procedure. ()

003. ADMINISTRATIVE APPEALS.

The award of a credit under the Tax Reimbursement Incentive Act is made at the recommendation of the Director of the Department of Commerce and approval of the Economic Advisory Council (Council). In light of the negotiated nature of awarding the Tax Reimbursement Incentive (TRI), there is no administrative appeal under these rules. Nothing in this section prohibits an aggrieved applicant from seeking judicial review as provided in Chapter 52, Title 67, Idaho Code. (4-11-15)

004. -- 099. (RESERVED)

100. DEFINITIONS AND ABBREVIATIONS.

Unless defined below, all words have the meaning ascribed in Chapter 47, Title 67, Sections 67-4737 through 67-4744, Idaho Code. ()

01. Incentive Agreement. A reimbursement contract between the Department and the business entity which details any instruction provided by the Council in addition to the requirements detailed in Chapter 47, Title 67, Section 4740, Idaho Code. Also referred to as an Agreement. (4-11-15)

02. Pre-Application. A form, paper or electronic, that is completed by the business entity or on behalf of the business entity by an authorized economic development or local government representative when details about the Meaningful Project are not fully known. A pre-application necessitates that an application is completed by the business entity or its authorized representative at a later time, and prior to award of a tax credit. (4-11-15)

03. Tax Reimbursement Incentive Act (TRI). A performance based tax reimbursement mechanism available to existing Idaho businesses and new businesses creating jobs in Idaho. Also known as the Idaho Reimbursement Incentive Act. (4-11-15)

101. -- 129. (RESERVED)

130. PROGRAM INTENT.

The TRI is designed to accelerate the growth of new business opportunities, encourage the creation of high-paying jobs, and diversify the state's economy. The Tax Reimbursement Incentive is a performance-based economic development tool that provides a refundable tax credit up to thirty percent (30%) for up to fifteen (15) years on new business entity income tax, sales tax, and payroll taxes paid as a result of meaningful project. The TRI will perpetually generate the revenues needed to fund the incentive. (4-11-15)

01. Available Credit. This credit is available to both existing and new companies seeking expansion in the state. The tax credit percentage and project term are negotiated based upon the quantity and quality of jobs created, state/regional economic impact and return on investment for Idaho, among others. The credit authorized must be the lowest approved percentage and term that will incentivize creation of new jobs and New State Revenue. (4-11-15)

02. Evaluation and Recommendation. Incentives will be evaluated and recommended to the Council by the Director, with final approval by the Council. The TRI will be governed by detailed incentive agreements between the Department and business entity. (4-11-15)

131. -- 149. (RESERVED)

150. ELIGIBILITY.

01. Eligible Recipients. Recipients of the TRI are limited to existing business entities located in Idaho seeking to expand their companies within the state of Idaho, and business entities, new to Idaho, seeking to relocate to, or expand in, the state of Idaho. (4-11-15)

02. Eligible Projects. An eligible project is an expansion of an existing business located in Idaho or the creation of new business operations in Idaho that generate the minimum required new jobs based on rural or urban location. (4-11-15)

151. JOB CREATION CRITERIA.

01. Rural Community. The minimum new jobs required for a rural community is not less than twenty (20) over the term of the project. (4-11-15)

02. Urban Community. The minimum new jobs required for an urban community is not less than fifty (50) over the term of the project. (4-11-15)

03. New Jobs. New jobs must exceed the business entities' maximum number of full times jobs in Idaho during the twelve (12) months immediately preceding the date of the application. (4-11-15)

04. Job Shift. A job that shifts from one (1) location within the state of Idaho to another location within the state of Idaho is not considered a new job. (4-11-15)

05. New Jobs Wages. New jobs wages must equal or exceed the average annual county wage in the county where the jobs are located. The Department will annually publish the average county wage based on the most recent, non-preliminary information, obtained from the Idaho Department of Labor. (4-11-15)

152. APPLICATION PROCESS.

01. Inquiry. The business entity, or its authorized representative, may engage an authorized representative from the Department to complete an initial screening process. The screening process will assist the business entity in determining to proceed with a pre-application or application. Information necessary during screening includes general details about the Project, the number of full-time jobs, the number of new jobs, the minimum new jobs, the rural or urban area under consideration, the industry, the community contribution, as well as any other information requested to determine eligibility. The business entity, in consultation with the Department's representative, makes a determination to proceed with a pre-application or a full application depending on the project timeline, known project details or other factors associated with the project. (4-11-15)

02. Pre-Application. After the business entity's determination to proceed with a pre-application, the business entity, or its authorized representative, will be provided with a pre-application. A pre-application may be completed by the business entity or an authorized representative of the business entity, such as an economic development or local government representative. A pre-application must detail the following: (4-11-15)

a. A complete description of the proposed project and the estimated economic benefit that will accrue to the state as a result of the project; (4-11-15)

b. A statement of dependency explaining whether the project will occur or how it will be altered if the application is denied by the council; (4-11-15)

c. A letter from the city or county, or both, expressing a commitment to supply community contribution; (4-11-15)

d. Detailed description of the proposed capital investment; (4-11-15)

e. Detailed description of jobs to be created, an approximation of the number of such jobs to be created and the projected wages to be paid for such jobs; and (4-11-15)

f. Detailed description of the estimated new state tax revenues by tax to be generated by the project.

(4-11-15)

03. Pre-Application Estimate Letter. Upon review and acceptance of a pre-application, the Director may issue an estimate letter to the business entity or its authorized representative, or both, which describes the estimated amount of the tax credit, the term of the tax credit, and any other contingencies determined necessary by the Department. This letter is not a binding commitment but an estimate based on the initial information supplied in the pre-application. (4-11-15)

04. Application. After the business entity's determination to proceed with an application, the business entity will be given access to the application, which must include, but not be limited to, the following information: (4-11-15)

a. A complete description of the proposed project and the estimated economic benefit that will accrue to the state as a result of the project; (4-11-15)

b. An affidavit of criticality explaining that without the TRI incentive, the business entity would be forced to alter its project or not choose Idaho; (4-11-15)

c. A letter from the city or county, or both, describing their commitment to supply community contribution, a specific description of the contribution, and the amount of the contribution; (4-11-15)

d. Business entities currently doing business in Idaho will supply a letter from the Idaho State Tax commission confirming that the business entity is in good standing in the state of Idaho and is not in unresolved arrears in the payment of any state tax or fee administered by the tax commission; (4-11-15)

e. An estimate of Idaho goods and services to be consumed or purchased by the business entity during the term; (4-11-15)

f. Known or expected detriments to the environment or existing industries in the state; (4-11-15)

g. An anticipated project inception date and proposed schedule of progress; (4-11-15)

h. Any proposed performance requirements and measurements that must be met prior to issuance of the tax credit; (4-11-15)

i. A description of any proposed capital investment; (4-11-15)

j. A detailed schedule and description of the projected jobs to be created, the projected wages to be paid for those jobs, and the anticipated hiring schedule for those jobs; and (4-11-15)

k. The estimated new state tax revenues to be generated by the project. (4-11-15)

05. Application Recommendation Letter. Upon review of an application, the Director may issue a letter that details the Director's anticipated recommendation to the Council. The letter may include the percentage of the tax credit, the term of the tax credit, and any other contingencies determined necessary by the Department. All application recommendation letters must contain a "subject to Economic Advisory Council approval" contingency clause. (4-11-15)

06. Technical Review - Pre-Application. The Director and Department staff will complete a technical review of each pre-application. Upon satisfaction that all pre-application requirements are met, the Director may issue an estimate letter. (4-11-15)

07. Technical Review - Application. The Director of the Department and Department staff will complete a technical review and economic impact analysis of each application. The technical review will consider many economic factors and external information sources such as, but not limited to, the region, industry, financial health and history of the business entity, as well as the quality, quantity and economic impact of new jobs and new

state revenue. Upon satisfaction that all application requirements are met, the Director may submit a recommendation for award to the Council. (4-11-15)

08. Economic Advisory Council. The Council reviews the application and the Director recommendations. Following review the council has the following three (3) options: (4-11-15)

a. Request additional information or action from the Director in order to obtain necessary information to approve or reject the application; or (4-11-15)

b. Approve the application and instruct the Director to enter into an incentive agreement with the business entity; or (4-11-15)

c. Reject the application. (4-11-15)

d. An approval or rejection from the council is not considered a contested case pursuant to Chapter 52, Title 67, Idaho Code, provided, however, that nothing in this section prohibits an aggrieved applicant from seeking judicial review as provided in Chapter 52, Title 67, Idaho Code. (4-11-15)

09. Pre-Application Schedule. The pre-application is open year round. Review of pre-applications are subject to the meeting schedule of Department staff. (4-11-15)

10. Application Schedule. The application is open year round. Review of applications is subject to the meeting schedule of Department Staff and the Council. The Council will meet no less than quarterly and has the ability to meet more often at the request of the Director. (4-11-15)

153. -- 159. (RESERVED)

160. CONFLICT OF INTEREST.

Conflict of Interest is defined by Idaho's Office of the Attorney General as any official action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit of the person or member of the person's household, or a business with which the person or a member of the person's household is associated. In the event Department staff, including the Director has a conflict of interest regarding an application, the conflict must be fully disclosed to the Director and the Council, and that person must abstain from decision making or evaluation of the application. In the event a Council member has a conflict of interest regarding an application, the Council member must fully disclose such conflict to the Director and the Council, and that Council member must abstain from discussing or voting on the application. (4-11-15)

161. -- 169. (RESERVED)

170. AGREEMENTS.

01. Incentive Agreement. At the direction of the Council, and in accordance with the criteria established by these rules, the Director enters into an incentive agreement with the business entity. (4-11-15)

02. Agreement Terms Defined. The incentive agreement contains any terms as approved by the Council, or deemed necessary by the state Deputy Attorney General, as well as defines the following: (4-11-15)

a. Maximum term that is not to exceed fifteen (15) years; (4-11-15)

b. Projected new state revenues to be generated during the term; (4-11-15)

c. Method and recordkeeping requirements to determine projected new state revenue to be generated; (4-11-15)

d. The approved tax credit percentage applied to new state revenue each year the business entity is entitled to receive the reimbursement during the term of the meaningful project; (4-11-15)

- e. The projected new jobs; (4-11-15)
- f. The terms and conditions of any and all performance requirements and measurements that must be met prior to the issuance of a tax credit authorization; (4-11-15)
- g. The agreed upon and necessary proof of compliance required prior to tax credit issuance. Proof of compliance provided by the business entity must be adequate to demonstrate to the director that all requirements and measurements have been met for the business entity to receive the tax credit; (4-11-15)
- h. The consequences of default by the business entity; (4-11-15)
- i. The period to be used to determine the taxes paid at the date of application; (4-11-15)
- j. Identification of any individual or entity included within the application that is entitled to a rebate pursuant to section 63-3641, Idaho Code, or is required to obtain a separate seller's permit pursuant to Chapter 36, Title 63, Idaho Code. (4-11-15)
- k. The federal employer identification or social security number for each individual or entity stated as the business entity in the incentive agreement; and (4-11-15)
- l. Identification of the individual or entity that is or will be claiming the refundable credit. (4-11-15)

171. -- 179. (RESERVED)

180. TAX CREDIT AUTHORIZATION.

01. Claiming Tax Credit. No business entity may claim a tax credit unless the business entity has a tax credit authorization issued by the Department. A business entity may claim a tax credit on its tax return, in the amount listed on the tax credit authorization for the year listed on the tax credit authorization. (4-11-15)

02. Duplicate Copy. The Department must provide a duplicate copy of any tax credit authorization to the Tax Commission. (4-11-15)

181. -- 189. (RESERVED)

190. ANNUAL REPORTING BY APPLICANT.

Required Annual reporting must be outlined in the incentive agreement and will include, but not be limited to, the following: (4-11-15)

01. New State Revenues. Supporting documentation of the new state revenues from the business entity's new project that were paid during the preceding calendar year. (4-11-15)

02. New Jobs Created. Supporting documentation of the new jobs that were created during the preceding tax year and the corresponding payroll information associated with the new jobs. (4-11-15)

03. Known or Expected Detriments. Known or expected detriments to the environment or existing industries in the state. (4-11-15)

04. Authorization Document. A document that expressly directs and authorizes the Tax Commission and Department of Labor to allow the Department access to the business entity's returns, filings and other information that may be necessary to verify or otherwise confirm the declared new state revenues, the new jobs and the associated payroll information. (4-11-15)

05. Tax Commission Letter. A letter from the Idaho State Tax Commission confirming that the business entity is in good standing in the state of Idaho and is not in unresolved arrears in the payment of any state tax or fee administered by the tax commission. (4-11-15)

06. Other Entitle to Rebate. Identification of any individual or entity included within the application that is entitled to a rebate pursuant to section 63-3641 or 63-4408, Idaho Code, or is required to obtain a separate seller's permit pursuant to Chapter 36, Title 63, Idaho Code. (4-11-15)

07. Supporting Documentation. Supporting documentation that the business entity has satisfied the measurements and requirements outlined in the incentive agreement. (4-11-15)

191. ANNUAL REPORTING BY DEPARTMENT.

The Department must create an annual written report for the Governor and the Legislature describing the following: (4-11-15)

01. Successes. The Department's success under this act in attracting new jobs; (4-11-15)

02. Estimated Tax Credit Commitments. The estimated amount of tax credit commitments made by the Department and the period of time over which tax credits will be paid; (4-11-15)

03. Economic Impact to State. The economic impact to the state related to generating new state revenue and providing tax credits under this act; (4-11-15)

04. Estimated Costs and Benefits. The estimated costs and economic benefits of the tax credit commitments that the Department made; and (4-11-15)

05. Actual Costs and Benefits. The actual costs and economic benefits of the tax credit commitments the Department made. (4-11-15)

06. Submittal of Report. The report must be submitted to the Office of the Governor and the appropriate legislative committee chairmen in a timely manner following the close of the state's fiscal year. (4-11-15)

192. -- 199. (RESERVED)

200. AUDIT.

The Department must arrange for an independent third-party audit annually pursuant to Chapter 47, Title 67, Idaho Code. The Department must consider any audit recommendations provided during the audit and implement changes as necessary as a result of those recommendations. ()

201. -- 209. (RESERVED)

210. CONTINUATION OF TAX CREDIT.

The Department will review the business entity's annual report. Provided the business entity provides a reasonable justification for authorizing or continuing a tax credit, the Department determines the amount of the tax credit to be granted, issue a tax credit authorization to the business entity, and provide a duplicate copy of the tax credit authorization to the Tax Commission. The amount of the tax credit to be continued must be in accordance with the credit percentages specified in the incentive agreement. The TRI will not be extended beyond the term and length specified in the incentive agreement. (4-11-15)

211. TERMINATION OR SUSPENSION OF TAX CREDIT.

During the term of the project for each business entity, the Department will review the business entity's annual report. If the information provided is inadequate or inaccurate to provide a reasonable justification for authorizing or continuing a tax credit, the Department may: (4-11-15)

01. Denial of Tax Credit. Deny the tax credit for that tax year; or (4-11-15)

02. Termination of Agreement. Terminate the incentive agreement for failure to meet the performance standards established in accordance with the terms outlined in the incentive agreement; or (4-11-15)

03. Request for Additional Documentation. Request the business entity to submit additional documentation. (4-11-15)

212. -- 219. (RESERVED)

220. SUSPENSION OF IDAHO REIMBURSEMENT INCENTIVE ACT.

The Director will suspend the issuance of all new incentive agreements with business entities upon the occurrence of the following conditions: (4-11-15)

01. Temporary Spending Reduction. The governor orders a temporary reduction of general fund spending authority, pursuant to Section 67-3512A, Idaho Code; and (4-11-15)

02. Suspension of New Agreements. The governor issues an executive order directing the Department to suspend the issuance of new incentive agreements during the tax year in which the temporary reduction of general fund spending authority has been ordered and the executive order issued. (4-11-15)

03. Existing Approved Agreements. In the case of suspension all agreements that have been approved by the Council prior to the governor issuing an executive order, as provided in Subsections 026.01 and 026.02 of these rules, will remain in full force and effect and shall not be modified or impaired as a result of the executive order. (4-11-15)

04. Support of Existing Agreements. During the period of time that new incentive agreements have been suspended, the Director will maintain the necessary services required to support all existing agreements and comply with all required reporting and review responsibilities. (4-11-15)

05. Removal of Suspension. The governor may remove the suspension issued by executive order. (4-11-15)

221. -- 999. (RESERVED)

IDAPA 59 – PUBLIC EMPLOYEES RETIREMENT SYSTEM OF IDAHO

DOCKET NO. 59-0000-1900

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and full force and effect upon adoption of the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 59-1301, 59-1314, 59-1372, 59-1383, 59-1392, 50-1507, 50-1508, 50-1524, and 72-1405 Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and 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 the change:

This pending rule adopts the following chapter IDAPA 59, rules of the Public Employee Retirement System of Idaho:

IDAPA 59

- *59.01.01, *Rules of the Public Employee Retirement System of Idaho (PERSI)*
- 59.02.01, *Rules for the Judges' Retirement Fund.*

PERSI performed a critical and comprehensive review of its administrative rules to clarify, simplify and remove ineffective language and regulation. IDAPA 59.01.01 has been rewritten and retitled “*Rules for the Public Employee Retirement System of Idaho (PERSI)*,” and consolidates previously codified rules under IDAPA 59.01.01 through 59.01.08 with some additional amendments. Language was modified to follow the Legislature’s new model for incorporation by reference and to make technical correction, clarify language, and add content from previously codified IDAPA 59.01.07, which expired.

This pending rule vacates the following proposed rules previously promulgated under this docket number as part of the omnibus proposed rulemaking under IDAPA 59, rules of the Public Employee Retirement System of Idaho:

- **(VACATED)** 59.01.01, *PERSI Rules of Administrative Procedure*
- **(VACATED)** 59.01.02, *PERSI Rules for Eligibility*
- **(VACATED)** 59.01.03, *PERSI General Provisions, Contribution Rate, Miscellaneous, & Interest Rate Rules*
- **(VACATED)** 59.01.04, *PERSI Disability Rules*
- **(VACATED)** 59.01.05, *PERSI Separation from Service Rules*
- **(VACATED)** 59.01.06, *PERSI Retirement Rules*
- **(VACATED)** 59.01.08, *PERSI Gain Sharing Rules*

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The complete text of the proposed rules was published in the June 19, 2019 Idaho Administrative Bulletin, [Vol. 19-6SE, pages 7423-7476](#).

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.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Cheryl George, (208) 287-9231.

Dated this 16th day October, 2019.

Don Drum, Executive Director
Phone: (208) 287-9230
Fax: (208) 334-3408

Public Employee Retirement System of Idaho
607 N. 8th Street, Boise ID 83702
P.O. Box 83720, Boise, ID 83720-0078

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

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 59-1314 and 72-1405, 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 59, rules of the Public Employees Retirement System of Idaho:

IDAPA 59

- 59.01.01, *PERSI Rules of Administrative Procedure*, many rules were modified to follow the Legislature's new model for incorporation by reference.
- 59.01.02, *PERSI Rules for Eligibility*
- 59.01.03, *PERSI General Provisions, Contribution Rate, Miscellaneous, and Interest Rate Rules*, modified for technical correction, clarity, and to add content for expired chapter IDAPA 59.01.07
- 59.01.04, *PERSI Disability Rules*
- 59.01.05, *PERSI Separation from Service Rules*
- 59.01.06, *PERSI Retirement Rules*
- 59.01.08, *PERSI Gain Sharing Rules*
- 59.02.01, *Rules for the Judges Retirement Fund*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule 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. Pursuant to Sections 59-1301 and 59-1305, the Public Employee Retirement System was created and placed under the management of the retirement board for the purpose of providing a retirement system and other benefits for public employees in the state of Idaho. The promulgated PERSI rules assist the fiduciaries of the fund to discharge their duties with respect to the fund solely in the interest of the members and their beneficiaries.

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 Cheryl George, (208) 287-9231.

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.

<p>THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0000-1900</p>
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59.01.01 – RULES FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)

001. LEGAL AUTHORITY.

All PERSI rules are adopted under the legal authority of Sections 50-1507, 50-1508, 50-1524, 59-1301, 59-1314, 59-1372, 59-1383, 59-1392, and 72-1405, Idaho Code. ()

002. INCORPORATION BY REFERENCE.

PERSI adopts through incorporation by reference as if set forth fully herein, the following Idaho Rules of Administrative Procedure of the Attorney General, IDAPA 04.11.01, updated by the Attorney General on April 7, 2011 (IDAPA 04.11.01): 004, 005, 051, 052, 100, 101, 103, 104, 153, 154, 157, 201, 203-206, 240, 280, 304, 416, 417, 500, 501, 510-513, 520-524, 526, 527, 529, 530, 553-555, 558-565, 600-605, 610-614, 651, 701, 702, 710, 720, 750, 760, 770, 780, 791, 800, 810, 812, 814, 815, 820, 822, 832, 834, 840, 850, and 860. ()

003. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES.

Written interpretations of these rules, to the extent they exist, are available from PERSI, at the Boise Office at 607 North Eighth Street, Boise, Idaho 83702. ()

004. ADMINISTRATIVE APPEAL.

Administrative appeals are conducted pursuant to these rules. ()

005. DEFINITIONS.

The definitions in Section 59-1302, Idaho Code, and the following apply to this chapter: ()

01. Active Member. A member participates in the active member allocation only if they are active and have at least twelve (12) months of accrued membership service on the last day of the fiscal year. For purposes of allocating extraordinary gains, active members also include: ()

a. Seasonal employees who have a pattern of employment that includes at least six (6) months of membership service in each of the preceding three (3) consecutive years; and ()

b. Employees who are on leave of absence on the last day of the fiscal year and either: ()

i. Return to active service for at least thirty (30) days before December 31 immediately following the end of the fiscal year; or ()

ii. Are entitled to benefits under the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA). ()

02. Actuary. This is the actuary retained by the Board. ()

03. Administrator. The Board. ()

04. Applicant. “Applicant” means an applicant for disability retirement under Section 59-1352, Idaho Code, or an individual requesting resumption of a disability retirement allowance under Section 59-1354A, Idaho Code. ()

05. Base Plan or Account. This is the PERSI defined benefit plan not including gain sharing allocations or interest thereon, or the individual accounts therein. ()

06. Board. “Board” means the governing authority of the Public Employee Retirement System of Idaho as provided by Section 59-1304, Idaho Code, of the Firefighters’ Retirement Fund created by Chapter 14, Title 72, Idaho Code, and the Policeman’s Retirement Fund created by Chapter 15, Title 50, Idaho Code. ()

07. Choice Plan or Account. This includes two (2) elements: ()

a. The defined contribution component of the PERSI plan consisting of gain sharing allocations together with earnings thereon or the individual accounts therein; and ()

b. The plan designated to receive voluntary and employer contributions as provided in Section 59-1308, Idaho Code, or the individual accounts therein. ()

08. Code. The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered. ()

09. Compensation. “Compensation” as used in Section 59-1342(6), Idaho Code, means “salary” as defined by Section 59-1302(31), Idaho Code. ()

10. Court Security. “Court Security” as used in Section 59-1303(3)(g), Idaho Code, means the employee’s primary responsibilities are designated by court order to quell disturbances in the courthouse, to prevent the escape of prisoners, to exclude weapons from the courthouse, and to perform other related courthouse security matters. ()

11. Date of Retirement. “Date of retirement” means the effective date on which a retirement allowance becomes payable. ()

12. Designated Beneficiary. The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-4, Q&A-4, of the Treasury regulations. ()

13. Employed In The Same Position Until Retired. As used in Section 59-1303(7), Idaho Code, “employed in the same position until retired” means the same job classification or position including continued employment in any revised job classification or new position title evolving from the same position as the result of personnel reclassification procedures provided the continued employment remains with the same state agency or within the same department of a political subdivision. ()

14. Employer. “Employer” means the state of Idaho or any political subdivision or governmental entity, provided such subdivision or entity has elected to come into the system. Governmental entity means any organization composed of units of government of Idaho or organizations funded only by government or employee contributions or organizations who discharge governmental responsibilities or proprietary responsibilities that would otherwise be performed by government. A political subdivision and government entity also means an entity that meets each of the requirements of Paragraphs a. through c. of this definition, taking into account all of the facts and circumstances. Entities that may qualify as political subdivisions include, among others, general purpose governmental entities, such as cities and counties (whether or not incorporated as municipal corporations), and special purpose governmental entities, such as special assessment districts that provide for roads, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvements, and other governmental purposes for a State or local governmental unit. ()

a. Sovereign powers. Pursuant to a State or local law of general application, the entity has a delegated right to exercise a substantial amount of at least one (1) of the following recognized sovereign powers of a State or local governmental unit: The power of taxation, the power of eminent domain, and police power. ()

b. Governmental purpose. The entity serves a governmental purpose. The determination of whether an entity serves a governmental purpose is based on, among other things, whether the entity carries out the public purposes that are set forth in the entity’s enabling legislation and whether the entity operates in a manner that provides a significant public benefit with no more than incidental private benefit. ()

c. Governmental control. A State or local governmental unit exercises control over the entity. For this purpose, control is defined in Subparagraph c.i. of this rule and a State or local governmental unit exercises such control only if the control is vested in persons described in Subparagraph c.ii. of this rule. ()

i. Definition of control. “Control” means an ongoing right or power to direct significant actions of the entity. Rights or powers may establish control either individually or in the aggregate. Among rights or powers that may establish control, an ongoing ability to exercise one or more of the following significant rights or powers, on a discretionary and non-ministerial basis, constitutes control: the right or power both to approve and to remove a majority of the governing body of the entity; the right or power to elect a majority of the governing body of the entity in periodic elections of reasonable frequency; or the right or power to approve or direct the significant uses of funds or assets of the entity in advance of that use. Procedures designed to ensure the integrity of the entity but not to direct significant actions of the entity are insufficient to constitute control of an entity. Examples of such procedures include requirements for submission of audited financial statements of the entity to a higher level State or local governmental unit, open meeting requirements, and conflicts of interest limitations. ()

ii. Control vested in a State or local governmental unit or an electorate. Control is vested in persons described as a State or local governmental unit possessing a substantial amount of each of the sovereign powers and acting through its governing body or through its duly authorized elected or appointed officials in their official capacities or an electorate established under applicable State or local law of general application, provided the electorate is not a private faction. ()

iii. Definition of “private faction.” A private faction is any electorate if the outcome of the exercise of control described in Subparagraph c.i. of this rule is determined solely by the votes of an unreasonably small number of private persons. The determination of whether a number of such private persons is unreasonably small depends on all of the facts and circumstances, including, without limitation, the entity’s governmental purpose, the number of members in the electorate, the relationships of the members of the electorate to one another, the manner of apportionment of votes within the electorate, and the extent to which the members of the electorate adequately represent the interests of persons reasonably affected by the entity’s actions. For purposes of this definition, an electorate is a private faction if any three (3) private persons that are members of the electorate possess, in the aggregate, a majority of the votes necessary to determine the outcome of the relevant exercise of control. Provided however, an electorate is not a private faction if the smallest number of private persons who can combine votes to establish a majority of the votes necessary to determine the outcome of the relevant exercise of control is greater than ten (10) persons. For example, if an electorate consists of twenty (20) private persons with equal, five-percent (5%) shares of the total votes, that electorate is not a private faction because a minimum of eleven (11) members of that electorate is necessary to have a majority of the votes. By contrast, for example, if an electorate consists of twenty (20) private persons with unequal voting shares in which some combination of ten (10) or fewer members has a majority of the votes, then that electorate does not qualify for the safe harbor from treatment as a private faction under this subparagraph. The following rules apply for purposes of determining numbers of voters and voting control in Subparagraph c.iii. of this rule, related parties (as defined in 26 CFR § 1.150–1(b)) are treated as a single person; and in computing the number of votes necessary to determine the outcome of the relevant exercise of control, all voters entitled to vote in an election are assumed to cast all votes to which they are entitled. ()

15. Employment. “Employment” as used in Section 59-1302(14)(B)(b), Idaho Code, shall mean the period of time from a member’s date of hire to the member’s succeeding date of separation from that state agency, political subdivision or government entity. Placing a member on leave of absence with or without pay shall not be considered as a separation from the employer. ()

16. Firefighters' Retirement Fund. “Firefighters’ Retirement Fund” or “FRF” is the retirement fund provided by Chapter 14, Title 72, Idaho Code. ()

17. Gain Sharing. This refers to the process of allocating extraordinary gains from the base plan into the defined contribution component of the PERSI plan as permitted in Section 414(k) of the Internal Revenue Code and as provided by Section 59-1309, Idaho Code, and these rules.” ()

18. General Member. “General member” is a PERSI member not classified as a police officer, firefighter, or paid firefighter. ()

19. Likely. For the purpose of Section 59-1302(12)(b), Idaho Code, “likely” means with reasonable medical certainty. ()

20. Normal Retirement Age. The age (or combination of age and years of service) at which a Member is entitled to an actuarially unreduced retirement benefit under the Plan. A Member will be fully vested upon attainment of Normal Retirement Age. ()

21. Occupational Hazard. “Occupational Hazard” means an injury or ailment solely resulting from the work an applicant does or from the environment in which an applicant works. ()

22. Pension Protection Act Definitions. Solely for purposes of the implementation by PERSI of section 402(l) of the Internal Revenue Code, the following definitions apply: ()

a. **Chaplain.** Any individual serving as an officially recognized or designated member of a legally

organized volunteer fire department or legally organized police department, or an officially recognized or designated public employee of a legally organized fire or police department who was responding to a fire, rescue, or police emergency. ()

b. Eligible Retired Public Safety Officer. An individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer with the state agency, political subdivision or government entity who maintains the eligible retirement plan from which distributions are made. ()

c. Normal Retirement Age. The member's age at the time that the member is eligible to retire with an unreduced benefit. ()

d. Public Safety Officer. An individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, as a firefighter, as a chaplain, or as a member of a rescue squad or ambulance crew. ()

23. Permissive Service Credits. This includes all credits obtained through voluntary purchase but does not include service obtained through repayment of a separation benefit under Section 59-1363, Idaho Code. ()

24. Police Officer. "Police officer" means an employee who is serving in a position as defined in Section 59-1303, Idaho Code. ()

25. Police Officer Member For Purposes Of Retirement Eligibility. The words "will be deemed to be a police officer member for purposes of retirement eligibility" as used in Section 59-1303(7), Idaho Code, means the member shall have a service retirement ratio of 1.000 provided for by Section 59-1341, Idaho Code. ()

26. Primary Employer. The primary employer is the state agency, political subdivision or government entity from whom the employee receives the highest aggregate salary per month. ()

27. Public Employee Retirement System of Idaho. "Public Employee Retirement System of Idaho" or "PERSI" is the retirement system created by Chapter 13, Title 59, Idaho Code. ()

28. Required Beginning Date. The date specified in Rule 508.02 of these rules. ()

29. Retiree. Retiree includes any member, contingent annuitant, or surviving spouse, receiving regular monthly allowances at the close of the fiscal year. It also includes members receiving a monthly disability retirement allowance, surviving spouses who elected an annuity option under Section 59-1361(5), Idaho Code, and members who were inactive at the close of the fiscal year but retire on or before the first day of January following the end of the fiscal year, retroactive to the first day of June of the fiscal year or earlier. ()

30. Same Position. "Same position" as set forth in Section 59-1303(7), Idaho Code, means the same job classification or position title including continued employment in any revised job classification or new position title evolving from that same position as the result of personnel reclassification procedures provided the continued employment remains within the same state agency or within the same department of a political subdivision. ()

31. Service. For the purposes of Rules 536 and 540, "service" includes only service for which the member is normally in the administrative offices of the state agency, political subdivision or government entity or normally required to be present at any particular work station for the state agency, political subdivision or government entity. ()

32. Surviving Spouse. "Surviving spouse" is a person as defined in Section 15-2-802, Idaho Code. ()

33. Teacher. "Teacher" is defined as a school employee who is required to be certified. ()

34. Transportation Of Prisoners. "Transportation of prisoners" as used in Section 59-1303(3)(g), Idaho Code, means the employee's primary responsibility is designated by court order to move prisoners from one (1)

place to another. ()

SUBCHAPTER A – PERSI RULES OF ADMINISTRATIVE PROCEDURE
RULES 011 THROUGH 099

011. COMMUNICATIONS WITH AGENCY -- IDENTIFICATION -- FILING.

All written communications and documents that are intended to be a part of an official record for a decision in a contested case must be filed with the officer designated by the agency. Communications addressing or pertaining to a given proceeding must be written under that proceeding's case caption and case number if assigned. Otherwise, such communications must specifically refer to the subject matter. 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. ()

012. SERVICE ON PARTIES AND OTHER PERSONS.

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 filing with the officer designated by the agency to receive filings. In a contested 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. ()

013. PROOF OF SERVICE.

Every document filed with and intended 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) or titles
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).

(Signature)
(Title)

()

014. SERVICE BY AGENCY.

Unless otherwise provided by statute or these rules, the officer designated by the agency to serve rules, notices, summonses, complaints, and orders issued by the agency may serve these documents by United States mail, to a party's last known mailing address or by personal service. 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. The officer designated by the agency to serve documents in a proceeding must serve all orders and notices 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. ()

015. COMPUTATION OF TIME.

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. 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 Saturday, Sunday or a legal holiday. ()

016. FEES AND REMITTANCES.

Fees and remittances to the agency must be paid by: electronic transfer, money order, bank draft or check payable to PERSI. Remittances in currency or coin are wholly at the risk of the remitter, and the agency assumes no responsibility for their loss. ()

017. FURTHER PROCEEDINGS.

Any person aggrieved by any otherwise final decision or inaction of the Board, before filing an appeal to district court, must initiate a formal proceeding before the Board. ()

018. PARTIES TO CONTESTED CASES LISTED.

Parties to contested cases before the agency are called petitioners, complainants or respondents. On reconsideration or appeal within the agency, parties are called by their original titles listed in the previous sentence. ()

019. PETITIONERS.

Persons 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, or to otherwise take action that will result in the issuance of an order or rule, are called "petitioners." ()

020. INITIAL PLEADING BY PARTY -- LISTING OF REPRESENTATIVES.

The initial pleading of each party at the formal stage of a contested case (petition, complaint, 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. 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 person signing the pleading will be considered the party's representative. ()

021. REPRESENTATION OF PARTIES AT HEARING.

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: ()

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

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

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

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

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. ()

022. PLEADINGS LISTED -- MISCELLANEOUS.

Pleadings in contested cases include, but are not limited to petitions, complaints, motions, answers, consent agreements, briefs, memoranda, statements of position, and orders. 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 020, 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 these rules. A party may adopt or join any other party's pleading. Two or more separately stated grounds, claims or answers concerning the same subject matter may be included in one pleading. ()

023. PETITIONS -- DEFINED -- FORM AND CONTENTS.

01. Pleadings Defined. All pleadings requesting the following are called "petitions": ()

a. Modification, amendment or stay of existing orders or rules; ()

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; or ()

c. Rehearing or reconsideration. ()

- 02. Petitions.** Petitions must: ()
- a.** State the facts upon which they are based; ()
- b.** Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; ()
- c.** State the relief desired; and ()
- d.** State the name of the person petitioned against (the respondent), if any. ()

03. Form and Contents of Petition of Declaratory Rulings. 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. ()

- a.** Form. The petition shall: ()
- i.** Identify the petitioner and state the petitioner's interest in the matter; ()
- ii.** State the declaratory ruling that the petitioner seeks; and ()
- iii.** Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the petition. ()
- b.** Legal Assertions. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. ()

024. MOTIONS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING -- PROCEDURE.

01. 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." ()

- 02. Form and Contents.** Motions must: ()
- a.** Fully state the facts upon which they are based; ()
- b.** Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based; and ()
- c.** State the relief sought. ()

03. Other. 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 a complaint or petition 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. ()

025. ANSWERS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING.

All pleadings responding to the allegations or requests of complaints, petitions, or motions are called "answers." ()

01. Answers to Pleadings Other Than Motions. Answers to complaints, petitions or appeals must be filed and served on all parties of record within twenty-eight (28) 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-eight (28) days. When an answer is not timely filed under this rule, the presiding officer may issue a notice of default against the respondent. Answers must admit or deny each material allegation of the complaint or petition. 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. ()

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. ()

026. FORM OF PLEADINGS.

All pleadings submitted by a party and intended to be part of an agency record must comply with the following: ()

01. Requirements. Pleadings must: ()

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

b. State the case caption, case number and title of the document; ()

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 ()

d. Have at least one inch (1") left and top margins. ()

02. Form. 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 RETIREMENT BOARD
OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

)

In re the Matter of) CASE NO.

)

) (TITLE OF DOCUMENT)

()

027. AMENDMENTS TO PLEADINGS -- WITHDRAWAL OF PLEADINGS.

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 may 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. ()

028. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES.

Pursuant to Section 67-5252, Idaho Code, persons designated as presiding officers are subject to disqualification for bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, status as an

employee of the agency, 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 petition for the disqualification of a hearing officer. However, the petition must be filed not later than fourteen (14) days after receiving notice that the officer will preside at a contested case or 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, prior to the designation of presiding officer(s). A presiding 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. Challenge to an agency head must be made pursuant to Sections 59-704 and 67-5252(4), Idaho Code. ()

029. SCOPE OF AUTHORITY OF PRESIDING OFFICERS.

The scope of presiding officers' authority may be restricted in the appointment by the agency. Unless the agency otherwise provides, presiding officers have the standard scope of authority, which is: ()

01. Schedule Cases. Authority to schedule cases assigned to the presiding officers including authority to issue notices of prehearing conference and of hearing, as appropriate. ()

02. Schedule and Compel Discovery. 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. ()

03. Conduct Hearings. Authority to preside at and conduct hearings, administer oaths, accept evidence into the record, rule upon objections to evidence, preserve and enforce order, issue subpoenas for and to compel the attendance of witnesses or the production of books, papers, documents and other evidence, and, to examine witnesses. ()

04. Issue Decisions for Review. Authority to issue a written decision for review and confirmation by the Board, including a narrative of the proceedings before the presiding officer and findings of fact, conclusions of law, and recommended or preliminary orders. ()

030. CHALLENGES TO STATUTES.

A presiding 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 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 presiding officer, then the officer shall apply the precedent of the court or the preemptive action of the federal authority to the proceeding before the officer and decide the proceeding in accordance with the precedent of the court or the preemptive action of the federal authority. ()

031. PRIVILEGE.

Communications in an ADR proceeding, including facts disclosed, offers made and all other aspects of the proceeding, are privileged and shall not be included in the record or 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 is required by court order, statute or agency rule to be made public. ()

032. FACTS DISCLOSED NOT PART OF THE RECORD.

Unless parties agree otherwise, 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. ()

033. SUBPOENAS.

The agency may issue subpoenas as authorized by statute, upon a party's motion or upon its own initiative. The presiding officer 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. ()

034. FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS.

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, and objections to discovery must be filed and served as provided in the discovery order. ()

035. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY.

The presiding officer may impose all sanctions recognized by statute or rule for failure to comply with the discovery order. ()

036. PROTECTIVE ORDERS.

As authorized by statute or rule, the presiding officer may issue protective orders limiting access to information generated during settlement negotiations, discovery, or hearing. ()

037. NOTICE OF HEARING.

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 presiding officer finds by order that it is necessary or appropriate that the hearing be held earlier. Notices must comply with the requirements of Rule 038. 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 officer(s) who will hear the case, the name, address and telephone number of the person to whom inquiries 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. ()

038. FACILITIES AT OR FOR HEARING AND ADA REQUIREMENTS.

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 American 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 provided the person requiring such assistance has made such a request not later than five (5) working days before the hearing or such other time as specified in the notice. ()

039. HOW HEARINGS HELD.

Hearings may be held in person or by telephone or television or other electronic means, so long as the parties or other authorized participants in the hearing have an opportunity to participate in the entire proceeding while it is taking place. ()

040. CONSOLIDATION OF PROCEEDINGS.

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. ()

041. STIPULATIONS.

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 presiding officer may regard a stipulation as evidence or may require proof by evidence of the facts stipulated. The presiding officer is not bound to adopt a stipulation of the parties, but may do so. If the presiding officer rejects a stipulation, the officer will do so before issuing a final order and will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation. ()

042. EXHIBITS.

Exhibit numbers may be assigned to the parties before the hearing. Exhibits prepared for hearing must 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 or in such other form as is customarily used. 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 offered at hearings are subject to appropriate and timely objections 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 prior approval of the presiding officer. ()

043. RECORD FOR DECISION.

01. Official Record. The agency will 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. ()

02. Contents. The record for a contested case will include: ()

a. All notices of proceedings; ()

b. All petitions, complaints, motions, and answers filed in the proceeding; ()

c. All intermediate or interlocutory rulings; ()

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

e. All offers of proof, however made; ()

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; ()

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

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

i. A statement of matters officially noticed; and ()

j. All recommended orders, preliminary orders, final orders, and orders on reconsideration. ()

044. NOTICE OF PROPOSED DEFAULT AFTER FAILURE TO APPEAR.

If a party fails to appear at the time and place set for hearing, the presiding officer may serve upon all parties a notice of a proposed default order denying or dismissing the matter set for hearing. 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 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. ()

045. REVIEW OF INTERLOCUTORY ORDERS.

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. ()

046. FINAL ORDERS.

01. Final Order - Definition. Final orders are orders that have been confirmed or issued by the Board pursuant to Section 59-1314(4), Idaho Code. ()

02. Content. Every final order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: ()

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. ()

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: ()

i. A hearing was held; ()

ii. The final agency action was taken; ()

iii. The party seeking review of the order resides; or ()

iv. The real property or personal property that was the subject of the agency action is attached. ()

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. ()

047. PERSONS WHO MAY APPEAL.

Pursuant to Section 59-1314 and 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. ()

048. -- 099. (RESERVED)

SUBCHAPTER B – PERSI RULES FOR ELIGIBILITY
RULE 100 THROUGH 249

100. MANDATORY MEMBERSHIP.

Membership in PERSI is mandatory for all persons who meet the statutory definition of an “employee” in Section 59-1302(14), Idaho Code. ()

101. MULTIPLE EMPLOYERS -- MEMBERSHIP ELIGIBILITY.

An employee establishes separate PERSI membership eligibility with each state agency, political subdivision or government entity with which the employee meets the statutory definition of an “employee” as found in Section 59-1302(14), Idaho Code. ()

01. Does Not Meet the Statutory Definition. Because membership eligibility is established independently with each state agency, political subdivision or government entity, neither employer nor employee contributions are required on salary paid by employers to employees who do not meet the statutory definition of an “employee” as found in Section 59-1302(14), Idaho Code. ()

02. State Agencies. The agencies of the state of Idaho shall be considered a single employer; an employee working for more than one (1) state agency establishes eligibility based on the total hours of employment worked with all state agencies. ()

102. ELECTED AND APPOINTED OFFICIALS NOT SUBJECT TO TWENTY HOUR REQUIREMENT.

Elected and appointed officials are not subject to the hourly requirement of Section 59-1302(14)(A)(a), Idaho Code.

()

103. ELECTED AND APPOINTED OFFICIALS -- MEMBERS OF PERSI.

Elected and appointed officials serving on boards, councils, or commissions who receive salary or honorarium for services performed are members of PERSI even though they receive nominal salary and do not normally work twenty (20) hours or more per week. ()

104. -- 110. (RESERVED)

111. TEACHER WORKING HALF-TIME OR MORE.

For the purposes of Section 59-1302(14)(A)(a), Idaho Code, a teacher is considered to be working half-time or more if the teacher's contract specifies that the engagement is half or more of a full contract. Teachers and all other school employees not employed under such a contractual arrangement shall be required to meet the requirement of normally working twenty (20) hours or more per week. ()

112. RESPONSIBILITY OF EMPLOYER TO DETERMINE EMPLOYEE ELIGIBILITY.

It is the responsibility of each state agency, political subdivision or government entity to make the initial determination of which employees within its jurisdiction meet the requirements of eligibility for membership and to withhold the required member contributions from salary paid. ()

113. NORMALLY WORKS TWENTY HOURS.

If a person works twenty (20) hours or more per week for more than one-half (1/2) of the weeks during the period of employment being considered, then the person meets the requirements of Section 59-1302(14)(A)(a), Idaho Code ("normally works twenty (20) hours or more per week"), and shall be considered an employee if the person meets the other requirements of Section 59-1302(14), Idaho Code. Statutory References: Section 59-1302(14)(A)(a). ()

114. APPLICATION OF THE FIVE MONTH REQUIREMENT.

An employee working twenty (20) hours or more per week who is hired with the expectation of working less than five (5) consecutive months, becomes retroactively eligible for membership whenever it becomes evident the period of employment will be five (5) consecutive months or longer and the employee meets the other requirements of Section 59-1302(14), Idaho Code. ()

01. Employee and Employer Contributions. Employee and Employer contributions must be immediately withheld by the state agency, political subdivision or government entity and forwarded when it becomes evident the period of employment will be five (5) consecutive months or more, and the employee meets the other requirements of Section 59-1302(14), Idaho Code. Delinquent employee and employer contributions on all prior months of employment, shall be paid by the state agency, political subdivision or government entity pursuant to Rule 114.02 of this chapter. ()

02. Delinquent Contributions. Employer shall collect and pay delinquent contributions of employer and employee within three (3) months once it becomes evident the period of employment will be five (5) consecutive months or more. If the delinquent contributions are not paid within three (3) months, regular interest will be assessed against the outstanding balance until the delinquent employee contributions are paid in full. ()

115. -- 120. (RESERVED)

121. CEASING TO BE AN EMPLOYEE.

A member ceases to be an employee on the day following the effective date that the member is separated from their employer. Membership service credits stop on the day the member ceases to be an employee. ()

122. LEAVE OF ABSENCE.

A member is ineligible to contribute and receive membership service credit while on leave of absence without pay or while on leave of absence with less than one-half (1/2) pay, unless the absence is occasioned by a worker's compensation claim approved by a surety. An active member separated from employment under conditions where both the member and the employer plan a later return to employment should be placed on leave of absence without pay during the planned period of absence. ()

01. Employer and Employee Contributions -- Leave of Absence. During the leave of absence without pay, employer and employee contributions cease. If the member is on a leave of absence as a result of an approved worker's compensation claim, employer and employee contributions are due and payable on any salary paid to the member. The member is entitled to a month of membership service credit for each month the member remains on leave of absence as a result of an approved worker's compensation claim and receives salary in addition to income benefits. ()

02. Documentation of Leave of Absence. The employer shall provide PERSI with documentation, on a form provided by PERSI, of a leave of absence to clarify the member's status and retirement benefit entitlement. ()

03. Status of Employee on Leave of Absence. An employee placed on a leave of absence by an employer remains in an employee status and is ineligible for payment of any separation benefits or for payment of a service, early, disability, or vested retirement allowance. If a member on leave of absence without pay terminates employment without returning to work, the leave without pay status is negated. ()

04. Leave of Absence -- Effect on Benefit Enhancement. An employee shall not be placed on a leave of absence without pay prior to the effective date of a benefit enhancement and then return to work after the effective date of the benefit enhancement for the purpose of qualifying for the benefit enhancement. An employee placed on unpaid leave of absence prior to the date of the benefit enhancement who returns to work after the effective date of the benefit enhancement and subsequently applies for retirement shall include with the application for retirement, certification from the state agency, political subdivision or government entity that the leave of absence was not granted for the purpose of allowing the person to qualify for the benefit enhancement. ()

123. -- 149. (RESERVED)

150. POLICE OFFICER MEMBERSHIP CERTIFICATION.

The executive director or the executive director's designee may accept or reject the employer's certification that an employee's primary position with the employer is a police officer for retirement purposes as required in Section 59-1303, Idaho Code. Acceptance of the certification shall not limit PERSI's right to review and reclassify the position for retirement purposes based upon an audit or other relevant information presented to PERSI. A position title or occasional assignments to active law enforcement service or hazardous law enforcement duties does not create a condition for designation as a police officer member for retirement purposes. ()

151. DEFINITION OF ACTIVE LAW ENFORCEMENT SERVICE.

"Active law enforcement service" as used in Section 59-1303, Idaho Code, means the primary duties of an employee's position requires the employee to investigate and arrest persons for criminal or suspected criminal violations or designate the employee to be responsible for the safekeeping and custody of persons held in a duly constituted confinement facility, actively participate in crime prevention or reduction, compel others to comply with the law, and must be able to prescribe and carry out the consequences of non-compliance. ()

152. HAZARDOUS LAW ENFORCEMENT DUTIES.

In applying Section 59-1303(4)(a)(i), Idaho Code, factors such as job conditions, physical exertion in apprehending suspects and other required knowledge, skill and physical ability will be considered. To qualify under Section 59-1303(4)(a)(ii), Idaho Code, job duties which are associated with life threatening situations must be an integral part of the job requirements. These duties are comparable to the job of patrol officer or detective. Pursuant to Section 59-1303(4)(a)(iii), Idaho Code, the major purpose of the position must be to compel others to comply with the law. The employee must be able to prescribe and carry out the consequences of non-compliance. All of Section 59-1303(4)(a), Idaho Code, must be met to be considered as hazardous law enforcement. PERSI staff is authorized to obtain all information pertinent to the position including questionnaires, job descriptions, interviews and any other pertinent records in order to make a report to the Board. ()

153. -- 199. (RESERVED)

200. DETERMINATION OF FIREFIGHTER.

A "firefighter" means an employee whose primary occupation with an employer as defined by Section 59-1302(16), Idaho Code, is that of preventing and extinguishing fires. A firefighter member for retirement purposes is an

employee appointed to the position of fire chief by a city council but not eligible to be a “paid firefighter,” or the chief fire warden of a timber protective association, or is an employee of either the department of lands or of a timber protective association whose primary position and principal accountability in that position either requires direct supervision of employees engaged in the prevention, presuppression and suppression of wild land fires or requires the performance of those duties as the principal function of the position. A firefighter member for retirement purposes does not include an employee who may be required on occasion to engage in those functions as a secondary requirement of the position.

Statutory References: Sections 59-1302(16), 59-1391(f) and 72-1403, Idaho Code.

()

201. INCORRECT CLASSIFICATION OF FIREFIGHTER.

An employer or agency which believes that any position is incorrectly classified as a firefighter position or a non-firefighter position may petition the Board for inclusion or exclusion of such position as a firefighter position. Such petition shall be in writing and explain in detail the principal duties of the position. The Board will review the petition and evidence, together with such information and evidence as may be presented by the staff of PERSI. The Board may decide the matter based upon the information supplied, may request additional information, or may request an oral presentation before the Board.

Statutory References: Sections 59-1302(16), 59-1391(f) and 72-1403, Idaho Code.

()

202. PAID FIREFIGHTER EXCLUSION FROM RULES 200 AND 201.

The provisions of Rules 200 and 201 of this subchapter do not apply to a “paid firefighter” as defined by Sections 59-1391(f) or 72-1403(A), Idaho Code, or to any references to “firefighter” found in Title 72, Chapter 14, Idaho Code.

Statutory References: Sections 59-1302(16), 59-1391(f) and 72-1403, Idaho Code.

()

203. -- 249. (RESERVED)

**SUBCHAPTER C - PERSI GENERAL PROVISIONS, CONTRIBUTION RATE,
MISCELLANEOUS, AND INTEREST RATE RULES
RULES 250 THROUGH 374**

250. PERSI EMPLOYER GENERAL MEMBER CONTRIBUTION RATE.

The PERSI employer contribution rate as provided in Section 59-1322, Idaho Code, beginning July 1, 2019, shall be eleven point ninety-four percent (11.94%) until next determined by the Board.

Statutory Reference: Sections 59-1302(16), 59-1391, 59-1394, and 59-1397, Idaho Code. Cross References: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 3-20-04)

()

251. FIREFIGHTER RETIREMENT FUND EMPLOYER RATE.

The Firefighter Retirement Fund employer rate shall be:

()

01. Option I and II Firefighters. For option I and II firefighters hired before October 1, 1980, as follows:

Option I and II Firefighters	
PERSI Employer Contribution Rate:	The employer contribution rate as provided in Rule 252.
Additional Employer Rate:	One percent (1%)
Social Security Rate:	Seven point sixty-five percent (7.65%)
Excess Merger Costs Rate:	Seventeen point twenty-four percent (17.24%) through December 31, 2014. Beginning January 1, 2015, five percent (5%) until next determined by the Board.
TOTAL Contribution Rate:	The total contribution rate is the sum of the PERSI employer contribution rate, the additional employer rate, the social security rate and the excess merger costs rate.

()

02. Class D Firefighters. For class D firefighters (firefighters employed on or after October 1, 1980, by a city or fire district that employs paid firefighters who are participating in the Firefighters' Retirement Fund), as follows:

Class D Firefighters	
PERSI Employer Contribution Rate:	The employer contribution rate as provided in Rule 252.
Excess Merger Costs Rate:	Seventeen point twenty-four percent (17.24%) through December 31, 2014. Beginning January 1, 2015, five percent (5%) until next determined by the Board.
TOTAL Contribution Rate:	The total contribution rate is the sum of the PERSI employer contribution rate and the excess merger costs rate.

Statutory References: Sections 59-1302(16), 59-1391, 59-1394, 59-1397, 72-1403, and 72-1434, Idaho Code. Cross References: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 7-1-03) (Amended 3-20-04) ()

03. Class E Members. For class E members (general members who meet the definition of paid firefighter under Section 59-1391(f), Idaho Code, but are not firefighters as defined in Section 59-1302(16), Idaho Code) the employer general member contribution rate as provided in Rule 250, plus the excess merger costs specified in Subsection 027.01. ()

252. PERSI EMPLOYER CLASS II CONTRIBUTION RATE.

The PERSI employer contribution rate as provided in Section 59-1322, Idaho Code, beginning July 1, 2019 for an employee classified as a police officer member excluding those listed in Rule 253 of this subchapter when applicable, and firefighters excluding those listed in Rule 251 of this subchapter, shall be twelve point twenty-eight percent (12.28%) until next determined by the Board.

Statutory References: Cross Reference: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 7-1-03) (Amended 3-20-04) ()

253. CITY OF IDAHO FALLS CLASS II CONTRIBUTION RATE.

The City of Idaho Falls employer rate for an employee classified as a police member shall be equal to the rate provided in Rule 252, unless further modified by the Board.

Statutory References: Cross Reference: (Amended 10-1-94) (Amended 10-1-97) (Amended Retroactively to 7-1-97) ()

254. -- 299. (RESERVED)

300. PERSI EMPLOYEE GENERAL MEMBER CONTRIBUTION RATE.

The PERSI employee contribution rate as provided in Section 59-1333, Idaho Code, beginning July 1, 2019 for all members not classified as police members or firefighters, shall be seven point sixteen percent (7.16%) of salary until next determined by the Board.

Statutory References: Cross Reference: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 3-20-04) ()

301. PERSI EMPLOYEE CLASS II CONTRIBUTION RATE.

The employee contribution rate as provided in Section 59-1334, Idaho Code, beginning July 1, 2019 for an employee classified as a police officer member shall be eight point seventy-seven percent (8.77%) of salary until next determined by the Board.

Statutory References: Cross Reference: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 3-20-04) ()

302. PUBLIC SAFETY OFFICER DISABILITY CONTRIBUTIONS UNDER SECTION 59-1352A, IDAHO CODE.

In accordance with Section 59-1352A, Idaho Code, public safety officers, as that term is used in Section 59-1352A, Idaho Code, shall pay an additional contribution rate of point four percent (.04%) of salary until next determined by the board. (3-1-10)

303. EMPLOYEE CONTRIBUTIONS BASED ON GROSS SALARY.

Employee contributions shall be based on the employee's total gross salary regardless of source or employer funds from which the employee is paid. ()

304. (RESERVED)

305. MULTIPLE EMPLOYERS -- CONTRIBUTION RATE.

If the employee has met eligibility requirements with more than one (1) employer which would result in different contribution rates, contributions shall be made at the rate for the member's classification with the primary employer. ()

306. STATE EMPLOYEE CONTRIBUTIONS.

If an employee establishes membership with the state, the employee and each agency must make contributions on the employee's salary regardless of the number of hours worked at each state agency. ()

307. POLICE OFFICER CONTRIBUTIONS WITHHELD INCORRECTLY.

If an employee's contributions are withheld by an employer and received by PERSI at the rate established for police members on the presumption the certification required by Section 59-1303, Idaho Code, will be accepted but if it is rejected, the employer shall adjust the employee's contribution rate to a general member rate and PERSI shall return to the employer any excess employee contributions that have occurred. ()

308. CONTRIBUTIONS DUE WHILE MEMBER IS RECEIVING WORKER'S COMPENSATION.

01. Contributions Due and Payable. Contributions are due and payable on whatever percentage of salary is paid while the member is on a leave of absence occasioned by an approved worker's compensation claim and the member will be entitled to a month of membership service credit for each month the member remains eligible. ()

02. Accruing Service. This means for an employee to continue accruing service the employer must continue to pay salary equal to the lesser of: ()

a. The amount necessary to meet the statutory definition of employee (half-time at the pre-injury rate or more), or ()

b. The employee's full-time salary less the employee's worker's compensation income benefit. ()

03. Maintaining Eligibility for Injured Workers. The intent of this rule is to permit employers to maintain eligibility for injured workers without having to pay salary that, when added to the employee's worker's compensation income benefit, would exceed the employee's total salary prior to the injury. Rule 122 is inapplicable to the extent it conflicts with this rule. ()

309. VACATION AND CONTRACTUAL PAYMENTS SUBJECT TO CONTRIBUTIONS.

Compensation paid for vacation or remaining contractual payments is salary subject to employee and employer contributions and earns membership credit through the effective date of separation from employment at the usual rate of compensation. ()

310. -- 324. (RESERVED)

325. TRANSFER OF CONTRIBUTIONS TO PERSI.

Employee and employer contributions shall be calculated and forwarded to PERSI by each employer for each

employee that meets the statutory definition of “employee” as defined in Section 59-1302 (14), Idaho Code. All Contributions shall be remitted, together with an approved report to PERSI no later than five (5) days after each pay date as provided in Section 59-1325(1), Idaho Code. ()

325. -- 349. (RESERVED)

350. REGULAR INTEREST.

Regular interest for each calendar year shall be the greater of ninety percent (90%) of the rate of return on the PERSI fund net of all expenses for the fiscal year ending immediately prior to the calendar year as reported in the actuary's annual valuation report or one percent (1%). ()

351. INTEREST – MEMBER CONTRIBUTIONS.

Regular interest as defined in Section 59-1302(26), Idaho Code, and Rule 300, in this subchapter, shall accrue to and be credited monthly to a member's accumulated contributions. ()

352. REINSTATEMENT INTEREST.

Reinstatement interest for each calendar year shall equal the average of the prime rate on June 30 of the latest three (3) years, plus one percent (1%). For purposes of this rule, the prime rate is the “prime rate” listed in the “Money Rates” section of the Wall Street Journal on June 30, or in the event no rate is listed on June 30, on the latest date preceding June 30 for which a prime rate is listed. Unless otherwise provided by statute or rule, reinstatement interest shall apply to all amounts owed to the fund. ()

353. -- 374. (RESERVED)

SUBCHAPTER D - PERSI DISABILITY RULES
RULES 375 THROUGH 499

375. GENERAL RULE.

Only members of PERSI with five (5) years of credited service are eligible for disability retirement except as provided in Section 59-1352(2), Idaho Code. ()

376. SERVICE RELATED DISABILITY FOR POLICE, GENERAL MEMBERS, AND FIREFIGHTERS.

Police, general members, and certain firefighter members are eligible for disability retirement beginning from the first day of employment when the disability is caused by occupational hazards, as provided in Section 59-1352(2), Idaho Code. ()

377. -- 399. (RESERVED)

400. APPLYING FOR DISABILITY RETIREMENT.

Eligible members may apply for disability retirement by completing a required form available from any PERSI office. The application process may include an interview by a PERSI representative. Applicants must release all medical records and information to PERSI. The hours worked to qualify as an employee as defined in I.C. § 59-1302(14) is inapplicable for purposes of determining disability. ()

401. INITIAL APPLICATION REVIEW.

Applications will first be reviewed to determine whether the applicant meets eligibility requirements. If all eligibility requirements are met, the application will proceed to disability assessment review. If all eligibility requirements are not met, the applicant will be notified in writing. ()

402. DISABILITY ASSESSMENT REVIEW.

Applicants will be assessed to determine whether they qualify for disability retirement under the applicable standard. The assessment may include without limitation, records review, medical and psychological examinations, vocational assessments, or any combination thereof as determined by PERSI. Failure to timely comply with any request made by PERSI during the assessment process shall result in automatic denial of disability retirement. At the conclusion of the assessment process, PERSI will notify applicants in writing whether or not they qualify for disability retirement.

()

403. RECONSIDERATION OF DISABILITY ASSESSMENT DECISION.

Applicants who are denied disability retirement as a result of an adverse disability assessment decision, and wish to contest that decision, are required to participate in a reconsideration process. A request for reconsideration must be made within thirty (30) days of the issuance of the disability assessment decision. Any additional information the applicant wishes to be considered must be submitted to PERSI within thirty (30) days of the request for reconsideration. The additional information will be reviewed and a reconsideration decision will be issued in writing to the applicant. ()

404. ADMINISTRATIVE REVIEW OF THE RECONSIDERATION DECISION.

A reconsideration decision shall be considered a final decision under Section 59-1314(2), Idaho Code, and may be appealed to the Board for review. In any related administrative hearing, the applicant shall be limited to presenting facts and evidence made available to PERSI in the reconsideration process. No new or additional evidence may be presented at the hearing. If the applicant has additional facts or evidence that were not made available to PERSI during the assessment or reconsideration process, the applicant must submit a new application for disability retirement, proceed again through the assessment process, and pay the costs associated with the second or subsequent assessment process. This rule is intended to promote the efficient use of fund resources by encouraging full and complete disclosure of information during the disability assessment process. ()

405. DELEGATION.

PERSI may, by contract or otherwise, delegate all or part of these processes to third parties. Where such delegation has been made, the term "PERSI" includes those third parties. When a member requests the resumption of a disability retirement allowance pursuant to Section 59-1354A, Idaho Code, the board may delegate its authority under Section 59-1354A, Idaho Code, to a third party. Where such delegation has been made, the term "Board" includes those third parties. ()

406. REASSESSMENT OF DISABILITY RETIREES.

Disability retirees are subject to reassessment of their disability at any time to determine whether they continue to be disabled under the standard in Section 59-1302(12), Idaho Code. However, pursuant to Section 59-1302(12)(b), Idaho Code, after two (2) years of continuous disability retirement, a disability retiree is not required to undergo medical examinations more often than every twelve (12) months. Disability retirees who are notified that they have been selected for reassessment are under the same obligation as applicants to supply information. ()

407. ATTORNEY'S FEES AND COSTS.

Attorney's fees and costs incurred by an applicant in his efforts to obtain disability retirement are the sole responsibility of the applicant and shall not be paid by PERSI except for fees related to judicial review for which applicant is found to be entitled under applicable law. ()

408. -- 424. (RESERVED)

425. BURDEN ON APPLICANT.

Applicant must demonstrate that, on or before applicant's last day of employment, he was disabled under the disability standard. The last day of employment is the last day applicant earned compensation, including annual leave and sick leave. When a member requests the resumption of a disability retirement allowance pursuant to Section 59-1354A, Idaho Code, the member must demonstrate that he could not successfully return to work because of the same disability on which his disability retirement was based. ()

426. STATUTORY STANDARD.

In applying the disability standard in Section 59-1302(12), Idaho Code, substantially all avenues of employment are reasonably closed if the applicant is permanently prevented, due to bodily injury or disease, from performing every substantial and material duty of any occupation for which the applicant is reasonably qualified by education, training or experience. ()

427. (RESERVED)

428. HIRE-ABILITY OF APPLICANT.

The inability of the applicant to secure employment in and around the area where the applicant resides is not considered in determining whether or not the applicant is disabled. If the applicant is able to perform every substantial and material duty of any jobs existing in the economy for which the applicant is reasonably qualified by education, training or experience, the applicant will not be considered disabled regardless of other factors that might affect the applicant's ability to actually secure employment, such as employer decisions and practices or the fact that there are no open positions or that the applicant is not selected for those positions. ()

429. -- 449. (RESERVED)

450. COMMENCEMENT AND DURATION OF DISABILITY ALLOWANCE.

The commencement and duration of payment of disability benefits is governed by Section 59-1354, Idaho Code. For purposes of Section 59-1354(1)(b), Idaho Code, a member "becomes eligible" on the first of the month following the date selected by the member which follows the date on which the member is unable to and thereafter does not return to work on a regular basis for two (2) consecutive weeks but not later than the date on which the member ceases to make contributions. ()

451. DETERMINING WORKER'S COMPENSATION OFFSET.

To determine the offset required by Section 59-1353, Idaho Code, the amount payable under the provisions of any worker's compensation law which represents income benefits as defined in Section 72-102, Idaho Code, shall be converted to a monthly equivalent and deducted from the monthly retirement allowance. ()

452. EFFECT OF UNUSED SICK LEAVE ON DISABILITY ALLOWANCE.

Unused sick leave entitlement provided for by either Section 33-1228, 33-2109A, or 67-5339, Idaho Code, shall not be considered salary or compensation in the application of Section 59-1354(1), Idaho Code. ()

453. -- 474. (RESERVED)

475. APPLICATION OF THIS SUBCHAPTER TO FRF DISABILITY RETIREMENT.

All the provisions of this subchapter, except rules 375, 376, 406, 426, 427, 451 and 452, apply also to applications for disability retirement under the FRF plan to the extent they do not conflict with the provisions of Title 72, Chapter 14, Idaho Code. ()

476. -- 499. (RESERVED)

SUBCHAPTER E - PERSI SEPARATION FROM SERVICE RULES
RULES 500 THROUGH 524

500. REPAYMENT OF SEPARATION BENEFITS -- EMPLOYEE STATUS.

Repayment of a separation benefit must commence while the member is an employee, as defined in Section 59-1302(14), Idaho Code. For purposes of this rule the term employee includes employees accruing benefits under the Department of Employment Retirement Plan, the Firefighters' Retirement Fund, and the Policeman's Retirement Fund.

Statutory Reference: Section 59-1360, Idaho Code. ()

501. INTEREST ACCRUAL AND CALCULATION ON SEPARATION BENEFITS.

Repayment of separation benefits as provided in Section 59-1360, Idaho Code, for employees whose most recent date of reemployment is after January 23, 1990, shall include payment of interest that shall accrue from the date each separation benefit was issued. Repayment of separation benefits as provided in Section 59-1360, Idaho Code, for employees whose most recent date of reemployment is before January 23, 1990, shall include payment of interest as determined by the law, statutes and rules in effect on the date of last reinstatement to employee status, except as provided in Rule 502, of this subchapter.

Statutory Reference: Section 59-1360, Idaho Code. ()

502. REPAYMENT OF SEPARATION BENEFITS BY EMPLOYEES PREVIOUSLY PRECLUDED FROM REPAYMENT.

Any employee who was precluded from repaying a separation benefit due to the fact they failed to meet the

requirements of Section 59-1360, Idaho Code (previously 59-1307, Idaho Code), may reinstate their previous credited service by repaying the full amount of their accumulated contributions provided such repayment includes payment of regular interest accruing from the date of each such separation benefit payment.
Statutory Reference: Section 59-1360, Idaho Code. ()

503. METHODS OF REPAYMENT OF SEPARATION BENEFITS.

01. Periodic and Lump-Sum Payments. Where an active member elects to repay a separation benefit to reinstate previous service as provided in Section 59-1360, Idaho Code, the member may request that repayment be made in periodic payments or in a lump-sum payment. No service will be reinstated until the full repayment has been made. ()

02. Repayments Initiated on or After March 1, 2000. For all repayments initiated on or after March 1, 2000, except as provided in Rule 501 of this subchapter, a repayment amount will be determined which shall be the sum of the separation benefit(s) plus regular interest from the date of the benefit payment(s) until the date of the first payment. The repayment amount will be amortized over the repayment period at the reinstatement rate in effect on the date of the first periodic payment. ()

03. Repayments Initiated Before March 1, 2000. For all periodic repayments initiated before March 1, 2000, a repayment amount will be determined which shall be the sum of the separation benefit(s) plus regular interest from the date of the benefit payment(s) until the date of the first payment. The repayment amount will be amortized over the repayment period at four point seventy-five percent (4.75%) interest. This is a grandfathered rate based on the rate in effect December 31, 1999, and will apply so long as payments exceed interest charges on a calendar year basis. If payments fail to exceed interest charges in any calendar year, the grandfathered rate will be forfeited and replaced by the reinstatement rate beginning in January immediately after the year in which the failure occurs. For purposes of these rules, a repayment is initiated by signing an agreement and making a payment. ()

04. Repayments Under Section 59-1331(2), Idaho Code. For (waiting period) payments made pursuant to Section 59-1331(2), Idaho Code, a repayment amount shall be determined which shall be the sum of contributions that would have been made plus regular interest from December 31, 1975 until the date of the first payment. The repayment amount will be amortized over the payment period at the reinstatement rate in effect on the date of the first periodic payment. ()

504. IN-SERVICE TRANSFERS TO REINSTATE SERVICE.

To the extent permitted by federal law, and in accordance with any regulation or other guidance issued by the Internal Revenue Service, an active member may transfer funds from a 401(k), a 403(b), or an eligible 457(b) plan, in which they are currently eligible to participate, to the Base Plan for purposes of buying back service previously forfeited due to receiving a separation benefit, purchasing service related to eligible waiting periods, or purchasing service for periods of delinquent contributions. ()

505. (RESERVED)

506. ROLLOVERS ACCEPTED INTO THE BASE PLAN.

The PERSI Base Plan will accept participant rollover contributions and direct rollovers of distributions made after December 31, 2001, for purposes of reinstating or purchasing service as permitted under the plan, from the following plans. No after-tax contributions may be rolled over into the Base Plan. ()

01. Qualified Plans. A qualified plan described in section 401(a) or 403(a) of the Internal Revenue Code (Code). ()

02. Annuity Contracts. An annuity contract described in section 403(b) of the Code. ()

03. 457 Plans. An eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. ()

04. IRAs. Any portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includable in gross

income. ()

507. DIRECT ROLLOVERS OUT OF THE BASE PLAN.

A direct rollover is a payment by the plan to an eligible retirement plan specified by the distributee. ()

01. Rollover Election. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this part, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars (\$500) paid directly to an eligible retirement plan specified by the distributee in a direct rollover. ()

02. Eligible Rollover Distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: ()

a. Any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; ()

b. Any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code (Code); ()

c. Any amount that is distributed on account of hardship; ()

d. The portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and ()

e. Any other distribution(s) that is reasonably expected to total less than two hundred dollars (\$200) during a year. ()

03. After-Tax Contributions. For purposes of the direct rollover provisions in Subsection 507.02, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for the amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable. ()

04. Eligible Retirement Plan. An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a Roth IRA described in Section 408A of the Code, an annuity plan described in section 403(a) of the Code, an annuity contract described in section 403(b) of the Code, an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, or a qualified plan described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. ()

05. Alternate Payees. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse, who is the alternate payee under a domestic retirement order, approved as provided in Sections 59-1319 and 1320, Idaho Code, are distributees with regard to the interest of the spouse or former spouse. ()

508. REQUIRED MINIMUM DISTRIBUTIONS.

01. Default Application of Federal Requirements. With respect to distributions under the Base Plan, and except as provided in Subsection 508.06, the Plan will apply the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code (Code) in accordance with a good faith interpretation of section 401(a)(9),

notwithstanding any provision of the Base Plan to the contrary. ()

02. Required Beginning Date. Except as otherwise provided in Subsections 508.04 through 508.08, distributions under the Base Plan shall begin not later than April 1 following the later of (a) the commencement year or (b) the year in which the member retires. For purposes of Rule 508, the "commencement year" is the calendar year in which the member reaches age seventy and one-half (70 1/2). ()

03. PERSI Selects Retirement Option. Any member required to take minimum distributions, as provided in this Rule 508, and fails to complete and submit an approved retirement application and select either a regular or optional retirement allowance by April 1 following the later of (a) the commencement year or (b) the year in which the member retires shall be deemed to have made the following selection: ()

a. If single, a regular retirement allowance and no other selection shall be required or permitted. ()

b. If married, Option 1 and no other selection shall be required or permitted, unless proof is provided that spouse has no community property interest in the benefit. ()

04. Lifetime Distributions. Distribution shall be made over the life of the participant or the lives of the participant and his beneficiary; or over a period certain not extending beyond the life expectancy of the member or the joint life and last survivor expectancy of the member and his beneficiary. ()

05. Timing of Required Distributions. A required distribution shall be deemed to have been made during the commencement year if actually made by the following April 1, but such delayed distribution shall not change the amount of such distribution, and the distribution otherwise required during the subsequent calendar year shall be calculated as if the first distribution had been made on the last day of the commencement year. ()

06. Adjustment of Required Distributions. Benefits paid prior to the commencement year shall reduce the aggregate amount subject to (but shall not otherwise negate) the minimum distribution requirements described herein. ()

07. Benefits Deferred Beyond Service Retirement. The first payment of benefits of an inactive member following deferment beyond service retirement will be in a lump sum that includes payment for those months of service dating from the date of service retirement when a monthly retirement payment would have started through the current monthly payment. Subsequent payments will be for the monthly retirement allowance only. ()

08. Death Benefits. All death benefits payable under the Base Plan will be distributed as soon as administratively practicable after request, but must in any event be distributed within fifteen (15) months of the member's death, unless the identity of the beneficiary is not ascertainable. ()

509. TRANSFERS TO NON-SPOUSE BENEFICIARIES.

Notwithstanding any other provision of the Base Plan to the contrary that would otherwise limit the options of the beneficiary of a deceased member who is not the member's spouse, the administrator shall, upon the request of such a beneficiary, transfer a lump sum distribution to the trustee of an individual account established under Section 408 of the Code in accordance with the provisions of Section 402(e)(11) of the Code. ()

510. -- 524. (RESERVED)

SUBCHAPTER F - PERSI RETIREMENT RULES
RULES 525 THROUGH 649

525. AVERAGE MONTHLY SALARY COMPUTATION -- EQUITABLE TREATMENT -- DIFFERENT WORK PERIODS.

Equitable treatment for all members can be achieved only if members whose career patterns covering the same time frame and who received identical annual salaries during each of the twelve-month periods of that time frame accrue

the same monthly service retirement allowance. To achieve this equity for the member whose annual salary has been paid on other than a twelve-month salary schedule during any contractual or like twelve-month period, the average monthly salary used for each one of those twelve-month periods will be determined from the total base period salary by using a divisor representing the months of membership service which would have been accumulated at that rate over a full base period.

Statutory Reference: Sections 59-1302(5A), 59-1391(b), Idaho Code.

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526. UNUSUAL COMPENSATION PATTERN EFFECT ON RETIREMENT CALCULATION.

Upon application for a retirement benefit, any portion of compensation which represents payments in excess of and inconsistent with the usual compensation pattern, for example, but not limited to lump sum contract payouts, excess vacation paid but not taken, paid sick leave, or a clothing allowance will not be considered in determining benefits.

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527. MAXIMUM RETIREMENT ALLOWANCE (RULE 111).

If the amount of a member's initial retirement allowance on the date of retirement would exceed the average salary during the member's highest thirty-six (36) consecutive calendar months of salary, then the member's initial retirement allowance will be limited to the greater of: the average salary during the highest thirty-six (36) consecutive calendar months of salary; or the initial retirement allowance based on credited service through April 1990. Optional retirement allowances will be computed after any limitation above has been applied.

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528. MEMBER NOTIFIED OF AVAILABLE RETIREMENT OPTIONS PRIOR TO BOARD APPROVAL.

The Retirement Board shall not act on any application for retirement unless the member has previously been provided with notification of the regular retirement option and options one (1) and two (2) election available to the member including the value of the monthly allowance of each. The value of options three (3) and four (4) will be provided if the member so requests the value of the option and provides information required to calculate that option (such as but not limited to social security benefit estimates) which is not available to PERSI but that can be provided by the member.

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529. -- 530. (RESERVED)

531. SPOUSAL CONSENT.

Except as provided in this rule, a member is required to complete and submit an approved retirement application and select either a regular or optional retirement allowance. The member's signature must be notarized. The application for retirement indicating the election made by the retiring member shall also be signed by the spouse certifying he/she understands and consents to the election made by the member. The spouse's signature must be notarized.

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532. PAYMENT DATE OF EARLY OR SERVICE RETIREMENT ALLOWANCE -- GENERAL MEMBERS.

As set forth by Section 59-1344, Idaho Code, a PERSI member's service retirement allowance or early retirement allowance is payable on the first of the month following the month in which the member ceases to be an employee while eligible for either of these forms of retirement.

Statutory References: Section 59-1344 and 59-1356(2), Idaho Code.

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533. ELECTED OR APPOINTED OFFICIAL WORKING FOR MULTIPLE STATE AGENCIES, POLITICAL SUBDIVISIONS OR GOVERNMENT ENTITIES.

An active member separated from employment by one (1) state agency, political subdivision or government entity for whom he or she did normally work twenty (20) hours or more per week and who is age 62 or older and eligible to retire but remains an elected or appointed official with a different state agency, political subdivision or government entity, may retire and continue in that elected or appointed position provided that position is one in which he or she does not normally work twenty (20) hours or more per week. The member shall receive retirement allowances under the conditions provided by Rule 539.

Statutory References: Sections 59-1344 and 59-1356(2), Idaho Code.

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534. ELECTED OR APPOINTED OFFICIAL RETIRING IN PLACE.

An active member serving as an elected or appointed official who does not normally work twenty (20) hours or more per week who is age 62 or older and eligible to retire and who is not an eligible employee with another state agency,

political subdivision or government entity pursuant to Rule 101 may then retire and continue in that position. The member shall receive retirement allowances under the conditions provided by Rule 539.

Statutory References: Sections 59-1344 and 59-1356(2), Idaho Code.

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535. RESTRICTIONS ON REEMPLOYMENT OF RETIRED MEMBERS.

There are no restrictions placed upon employment or earnings of retired members except with respect to employment by a state agency, political subdivision or government entity member of PERSI. Unless specified otherwise, the conditions of reemployment outlined in this subchapter apply for employment with any state agency, political subdivision or government entity member of the system.

Statutory Reference: Section 59-1356, Idaho Code.

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536. RETIRED MEMBER BECOMING AN ACTIVE MEMBER.

A PERSI retired member employed in a position which involves service of normally twenty (20) hours or more per week for a period of five (5) or more consecutive months or longer will return to the status of an active member. Retirement benefits will suspend on reemployment and employee and employer contributions will resume to provide additional retirement credits. If a retired member is reemployed in a position which involves service of twenty (20) hours or more per week for a period of less than five (5) consecutive months, their monthly retirement benefits will continue to be paid. If the member's reemployment should equal or exceed the five (5) month period for any reason, the member will be required to repay the retirement benefits paid during the five (5) month period which they were reemployed and they will return to the status of an active member. Employee and employer contributions will be due for the five (5) consecutive month period.

Statutory Reference: Section 59-1356, Idaho Code.

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537. (RESERVED)

538. REEMPLOYMENT LESS THAN FIVE CONSECUTIVE MONTHS.

If the period of reemployment develops to be less than five (5) consecutive months, contributions will be refunded and retirement allowances will resume as of the date they were discontinued.

Statutory Reference: Section 59-1356, Idaho Code.

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539. REEMPLOYMENT -- WORKING LESS THAN TWENTY HOURS OR LESS THAN FIVE CONSECUTIVE MONTHS.

Monthly retirement allowances will continue to be paid to the PERSI retired member who returns to employment in a position where the member does not normally work twenty (20) hours or more per week or the reemployment is for a period which does not total five (5) consecutive months and the state agency, political subdivision or government entity so certifies. In such cases, employee and employer contributions are neither required nor acceptable and no new retirement credits can be earned.

Statutory Reference: Section 59-1356, Idaho Code.

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540. RETIRED MEMBER BECOMING AN ELECTED OR APPOINTED OFFICIAL.

A PERSI retired member who is subsequently elected or appointed by an employer to public office and who is not normally required to perform services of twenty (20) hours or more per week in that position may continue to receive retirement allowances in the status of a reemployed retired member under conditions outlined by Rule 539.

Statutory Reference: Section 59-1356, Idaho Code.

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541. SEPARATION FROM EMPLOYMENT AFTER REEMPLOYMENT.

Upon subsequent separation from employment after reemployment, the member's original monthly retirement allowance will resume with appropriate cost-of-living adjustments plus the addition of a separate allowance computed with respect to salary and service credited during the reemployment period.

Statutory Reference: Section 59-1356, Idaho Code.

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542. EARLY RETIREMENT MEMBER -- REEMPLOYMENT.

A PERSI member who had been receiving an early retirement allowance and who returns to employment as an active member may refund all retirement benefits previously paid plus regular interest accrued from the date each monthly allowance had been paid, thereby negating the previous retirement status. The month of last contribution prior to the negated retirement and the month of initial contribution upon return to active membership shall be considered consecutive months of contributions in the determination of an appropriate salary base period upon subsequent

retirement.

Statutory Reference: Section 59-1356, Idaho Code.

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543. BENEFIT ENHANCEMENT -- QUALIFICATION.

To qualify for a benefit enhancement, a person must remain an active member through the day following the effective date of the enhancement.

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544. POST RETIREMENT ALLOWANCE ADJUSTMENTS -- PERSI RETIREES.

The Board shall annually determine the post retirement cost of living adjustment (COLA) for the Public Employee Retirement System of Idaho (PERSI) pursuant to Section 59-1355, Idaho Code. The Board shall have discretion in adopting a yearly discretionary and/or retro-active COLA. The Board shall yearly adopt this COLA no later than the December Board meeting of each year with an effective date of March 1 of the next year.

Statutory References: Section 59-1355, Idaho Code.

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545. ACTUARIAL ASSUMPTION TABLES.

The actuarial tables used for determining optional and early retirement benefits are as follows:

TABLE A -- PAGE 1 PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO EARLY RETIREMENT FACTORS If the date of last contribution is prior to 10/1/92											
Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.970	.940	.910	.880	.850	.770	.690	.610	.530	.450
1	.998	.968	.938	.908	.878	.843	.763	.683	.603	.523	
2	.995	.965	.935	.905	.875	.837	.757	.677	.597	.517	
3	.993	.963	.933	.903	.873	.830	.750	.670	.590	.510	
4	.990	.960	.930	.900	.870	.823	.743	.663	.583	.503	
5	.988	.958	.928	.898	.868	.817	.737	.657	.577	.497	
6	.985	.955	.925	.895	.865	.810	.730	.650	.570	.490	
7	.983	.953	.923	.893	.863	.803	.723	.643	.563	.483	
8	.980	.950	.920	.890	.860	.797	.717	.637	.557	.477	
9	.978	.948	.918	.888	.858	.790	.710	.630	.550	.470	
10	.975	.945	.915	.885	.855	.783	.703	.623	.543	.463	
11	.973	.943	.913	.883	.853	.777	.697	.617	.537	.457	

First sixty months reduction: 0.2500% Next sixty months reduction: 0.6667%

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TABLE A -- PAGE 2 PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO EARLY RETIREMENT FACTORS If the date of last contribution is on or after 10/1/92 but prior to 10/1/93											
Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.970	.940	.910	.880	.850	.777	.705	.632	.560	.487
1	.998	.968	.938	.908	.878	.844	.771	.699	.626	.554	
2	.995	.965	.935	.905	.875	.838	.765	.693	.620	.548	
3	.993	.963	.933	.903	.873	.832	.759	.687	.614	.542	
4	.990	.960	.930	.900	.870	.826	.753	.681	.608	.536	
5	.988	.958	.928	.898	.868	.820	.747	.675	.602	.530	
6	.985	.955	.925	.895	.865	.814	.741	.669	.596	.524	
7	.983	.953	.923	.893	.863	.808	.735	.663	.590	.518	
8	.980	.950	.920	.890	.860	.802	.729	.657	.584	.512	
9	.978	.948	.918	.888	.858	.796	.723	.651	.578	.506	
10	.975	.945	.915	.885	.855	.790	.717	.645	.572	.500	
11	.973	.943	.913	.883	.853	.784	.711	.639	.566	.494	

First sixty months reduction: 0.2500% Next sixty months reduction: 0.6042%

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TABLE A -- PAGE 3 PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO EARLY RETIREMENT FACTORS If the date of last contribution is on or after 10/1/93 but prior to 10/1/94											
Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.970	.940	.910	.880	.850	.785	.720	.655	.590	.525
1	.998	.968	.938	.908	.878	.845	.780	.715	.650	.585	
2	.995	.965	.935	.905	.875	.839	.774	.709	.644	.579	
3	.993	.963	.933	.903	.873	.834	.769	.704	.639	.574	
4	.990	.960	.930	.900	.870	.828	.763	.698	.633	.568	
5	.988	.958	.928	.898	.868	.823	.758	.693	.628	.563	
6	.985	.955	.925	.895	.865	.817	.752	.687	.622	.557	
7	.983	.953	.923	.893	.863	.812	.747	.682	.617	.552	
8	.980	.950	.920	.890	.860	.807	.742	.677	.612	.547	

TABLE A -- PAGE 3 PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO EARLY RETIREMENT FACTORS If the date of last contribution is on or after 10/1/93 but prior to 10/1/94											
Months	Years										
9	.978	.948	.918	.888	.858	.801	.736	.671	.606	.541	
10	.975	.945	.915	.885	.855	.796	.731	.666	.601	.536	
11	.973	.943	.913	.883	.853	.790	.725	.660	.595	.530	

First sixty months reduction: 0.2500% Next sixty months reduction: 0.5417%

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TABLE A -- PAGE 4 PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO EARLY RETIREMENT FACTORS Date of last contribution is on or after 10/1/94 or later											
Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.0	.970	.940	.910	.880	.850	.792	.735	.677	.620	.562
1	.998	.968	.938	.908	.878	.845	.788	.730	.673	.615	
2	.995	.965	.935	.905	.875	.840	.783	.725	.668	.610	
3	.993	.963	.933	.903	.873	.836	.778	.721	.663	.606	
4	.990	.960	.930	.900	.870	.831	.773	.716	.658	.601	
5	.988	.958	.928	.898	.868	.826	.769	.711	.654	.596	
6	.985	.955	.925	.895	.865	.821	.764	.706	.649	.591	
7	.983	.953	.923	.893	.863	.816	.759	.701	.644	.586	
8	.980	.950	.920	.890	.860	.812	.754	.697	.639	.582	
9	.978	.948	.918	.888	.858	.807	.749	.692	.634	.577	
10	.975	.945	.915	.885	.855	.802	.745	.687	.630	.572	
11	.973	.943	.913	.883	.853	.797	.740	.682	.625	.567	

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TABLE B -- Page 1 PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO RETIREMENT REDUCTION FACTORS FOR OPTIONS 3 AND 4 AND CERTAIN DEATH BENEFITS Options 3 and 4: Years and Months Until Member Would Be Social Security Retirement Age Death Benefits: Additional Years and Months Until Member Would Qualify for an Unreduced Service Retirement Allowance AFTER Applying Table A factors											
Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.923	.853	.787	.727	.671	.620	.572	.528	.488	.451
1	.993	.917	.847	.782	.722	.667	.616	.568	.525	.485	
2	.987	.911	.841	.777	.717	.662	.612	.565	.521	.481	
3	.980	.905	.836	.772	.713	.658	.608	.561	.518	.478	
4	.974	.899	.830	.767	.708	.654	.604	.557	.515	.475	
5	.967	.893	.825	.762	.703	.649	.600	.554	.511	.472	
6	.961	.887	.819	.756	.699	.645	.596	.550	.508	.469	
7	.955	.881	.814	.751	.694	.641	.592	.546	.504	.466	
8	.948	.876	.808	.746	.689	.636	.588	.543	.501	.463	
9	.942	.870	.803	.742	.685	.632	.584	.539	.498	.460	
10	.936	.864	.798	.737	.680	.628	.580	.535	.494	.457	
11	.930	.858	.793	.732	.676	.624	.576	.532	.491	.454	

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TABLE B -- Page 2 PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO RETIREMENT REDUCTION FACTORS FOR OPTIONS 3 AND 4 AND CERTAIN DEATH BENEFITS Options 3 and 4: Years and Months Until Member Would Be Social Security Retirement Age Death Benefits: Additional Years and Months Until Member Would Qualify for an Unreduced Service Retirement Allowance AFTER Applying Table A factors											
Months	Years										
	10	11	12	13	14	15	16	17	18	19	20
0	.451	.416	.384	.355	.327	.302	.279	.258	.238	.220	.203
1	.448	.413	.382	.352	.325	.300	.277	.256	.236	.218	
2	.445	.411	.379	.350	.323	.298	.276	.254	.235	.217	
3	.442	.408	.377	.348	.321	.296	.274	.253	.233	.215	
4	.439	.405	.374	.345	.319	.294	.272	.251	.232	.214	

TABLE B -- Page 2 PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO RETIREMENT REDUCTION FACTORS FOR OPTIONS 3 AND 4 AND CERTAIN DEATH BENEFITS Options 3 and 4: Years and Months Until Member Would Be Social Security Retirement Age Death Benefits: Additional Years and Months Until Member Would Qualify for an Unreduced Service Retirement Allowance AFTER Applying Table A factors											
Months	Years										
5	.436	.402	.372	.343	.317	.293	.270	.249	.230	.213	
6	.433	.400	.369	.341	.315	.291	.268	.248	.229	.211	
7	.430	.397	.367	.339	.313	.289	.267	.246	.227	.210	
8	.427	.394	.364	.336	.311	.287	.265	.244	.226	.208	
9	.424	.392	.362	.334	.308	.285	.263	.243	.224	.207	
10	.422	.389	.359	.332	.306	.283	.261	.241	.223	.206	
11	.419	.387	.357	.330	.304	.281	.260	.240	.221	.204	

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TABLE B -- Page 3 PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO RETIREMENT REDUCTION FACTORS FOR OPTIONS 3 AND 4 AND CERTAIN DEATH BENEFITS Options 3 and 4: Years and Months Until Member Would Be Social Security Retirement Age Death Benefits: Additional Years and Months Until Member Would Qualify for an Unreduced Service Retirement Allowance AFTER Applying Table A Factors						
Months	Years					
	20	21	22	23	24	25
0	.203	.187	.173	.160	.148	.136
1	.202	.186	.172	.159	.147	.135
2	.200	.185	.171	.158	.146	.134
3	.199	.184	.170	.157	.145	.134
4	.198	.183	.169	.156	.144	.133
5	.196	.181	.167	.155	.143	.132
6	.195	.180	.166	.154	.142	.131
7	.194	.179	.165	.153	.141	.130
8	.192	.178	.164	.152	.140	.129
9	.191	.177	.163	.151	.139	.128
10	.190	.175	.162	.150	.138	.127

TABLE B -- Page 3 PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO RETIREMENT REDUCTION FACTORS FOR OPTIONS 3 AND 4 AND CERTAIN DEATH BENEFITS Options 3 and 4: Years and Months Until Member Would Be Social Security Retirement Age Death Benefits: Additional Years and Months Until Member Would Qualify for an Unreduced Service Retirement Allowance AFTER Applying Table A Factors						
Months	Years					
11	.189	.174	.161	.149	.137	.127

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TABLE C -- Page 1 PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO CONTINGENT ANNUITANT FACTORS For persons retiring before July 1, 1995			
	Age Difference in Years	Factors	
		Option 1	Option 2
	15 *	0.600	0.750
	14	0.610	0.758
	13	0.621	0.766
	12	0.631	0.775
	11	0.642	0.782
Member	10	0.652	0.789
Older	9	0.663	0.797
Than	8	0.674	0.804
Contingent Annuitant	7	0.685	0.812
	6	0.697	0.821
	5	0.708	0.830
	4	0.720	0.838
	3	0.732	0.846
	2	0.746	0.855
	1	0.762	0.865
	0	0.780	0.876
	1	0.799	0.887

TABLE C -- Page 1 PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO CONTINGENT ANNUITANT FACTORS For persons retiring before July 1, 1995			
	Age Difference in Years	Factors	
	2	0.823	0.902
	3	0.836	0.910
	4	0.847	0.918
	5	0.856	0.924
Member	6	0.865	0.930
Younger	7	0.873	0.935
Than	8	0.881	0.940
Contingent Annuitant	9	0.888	0.944
	10	0.897	0.949
	11	0.906	0.955
	12	0.916	0.961
	13	0.926	0.967
	14	0.934	0.969
	15 or more	0.940	0.970

*For each year the member is more than fifteen (15) years older than the contingent annuitant subtract .01 from the factor for Option 1 and subtract .006 from the factor for Option 2. ()

TABLE C -- Page 2 PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO CONTINGENT ANNUITANT FACTORS For persons retiring on or after July 1, 1995			
	Age Difference in Years	Factors	
		Option 1	Option 2
	15 *	0.690	0.810
	14	0.700	0.816
	13	0.710	0.822
	12	0.720	0.828
	11	0.730	0.834
Member	10	0.735	0.840
Older	9	0.740	0.846
Than	8	0.745	0.852
Contingent Annuitant	7	0.750	0.858

TABLE C -- Page 2 PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO CONTINGENT ANNUITANT FACTORS For persons retiring on or after July 1, 1995			
	Age Difference in Years	Factors	
	6	0.755	0.864
	5	0.760	0.870
	4	0.765	0.876
	3	0.770	0.882
	2	0.785	0.888
	1	0.800	0.894
	0	0.815	0.900
	1	0.835	0.915
	2	0.855	0.925
	3	0.875	0.935
	4	0.890	0.945
	5	0.900	0.950
Member	6	0.910	0.955
Younger	7	0.920	0.960
Than	8	0.930	0.965
Contingent Annuitant	9	0.940	0.967
	10	0.944	0.969
	11	0.946	0.971
	12	0.948	0.973
	13	0.950	0.975
	14	0.952	0.977
	15 or more	0.954	0.979

*For each year the member is more than fifteen (15) years older than the contingent annuitant subtract .01 from the factor for Option 1 and subtract .006 from the factor for Option 2. (Amended 96) ()

TABLE C -- Page 3 PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO CONTINGENT ANNUITANT FACTORS For persons retiring on or after July 1, 2011			
	Age Difference in Years	Factors	
		Option 1	Option 2
	15 *	0.729	0.851
	14	0.736	0.856
	13	0.743	0.861
	12	0.750	0.866
	11	0.757	0.871
Member	10	0.764	0.876
Older	9	0.771	0.881
Than	8	0.778	0.886
Contingent Annuitant	7	0.785	0.891
	6	0.792	0.896
	5	0.799	0.902
	4	0.808	0.908
	3	0.818	0.914
	2	0.833	0.920
	1	0.848	0.926
	0	0.863	0.932
	1	0.875	0.938
	2	0.887	0.944
	3	0.895	0.949
	4	0.902	0.954
	5	0.909	0.959
Member	6	0.916	0.963
Younger	7	0.923	0.966
Than	8	0.930	0.968
Contingent Annuitant	9	0.940	0.970
	10	0.944	0.972
	11	0.946	0.974

TABLE C -- Page 3 PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO CONTINGENT ANNUITANT FACTORS For persons retiring on or after July 1, 2011			
	Age Difference in Years	Factors	
	12	0.948	0.976
	13	0.950	0.978
	14	0.952	0.980
	15 or more	0.954	0.982

*For each year the member is more than fifteen (15) years older than the contingent annuitant subtract .01 from the factor for Option 1 and subtract .01 from the factor for Option 2. ()

544. PRE-ERISA VESTING RULES.

01. Termination or Partial Termination. Upon the effective date of any termination or partial termination or upon a complete discontinuation of contributions: ()

a. No persons who were not theretofore members shall be eligible to become members; ()

b. No further benefits shall accrue; and ()

c. The accrued benefits of all members not theretofore vested and not theretofore forfeited shall immediately become fully vested. ()

545. FORFEITURES.

Forfeitures will not be applied to increase the benefits any employee would otherwise receive under the Base Plan. ()

546. ACTUARIAL ASSUMPTIONS TO BE SPECIFIED.

Whenever the amount of any Base Plan benefit is to be determined on the basis of actuarial assumptions, such assumptions will be specified in rule in a manner that precludes employer discretion. ()

547. COMPENSATION LIMIT.

01. Limit. Except for members of the system prior to July 1, 1996, as provided in Section 59-1302(31)(B), Idaho Code, the annual compensation of each participant taken into account in determining benefit accruals in any plan year beginning after December 31, 2001, shall not exceed two hundred thousand dollars (\$200,000). Annual compensation means compensation during the calendar year (the determination period). In determining benefit accruals for determination periods beginning before January 1, 2002, compensation shall be two hundred thousand dollars (\$200,000). ()

02. Limit Adjustment. The two hundred thousand dollars (\$200,000) limit on annual compensation in Subsection 547.01 shall be adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. ()

548. DEFINED BENEFIT DOLLAR LIMITATION.

The "defined benefit dollar limitation" is one hundred and sixty thousand dollars (\$160,000), as adjusted, effective January 1 of each year thereafter, under Section 415(d) of the Internal Revenue Code (Code) in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies. The "maximum permissible benefit" is the defined benefit dollar limitation (adjusted where required, as provided in

Subsection 548.01 and, if applicable, in Subsections 548.02 through 548.04). ()

01. Less Than Ten Years of Service. If the participant has fewer than ten (10) years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction: ()

a. The numerator of which is the number of years (or part thereof) of participation in the plan; and ()

b. The denominator of which is ten (10). ()

02. Benefit Begins Prior to Age Sixty-Two. If the benefit of a participant begins prior to age sixty-two (62), the defined benefit dollar limitation applicable to the participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the participant at age sixty-two (62) (adjusted under Subsection 548.01, if required). The defined benefit dollar limitation applicable at an age prior to age sixty-two (62) is determined as set forth in IRS regulation under section 415(b)(2) of the Code. This Subsection 548.02 does not apply to participants who have at least fifteen (15) years of credited service for which the member was classified as a police officer or firefighter. ()

03. Benefit Begins at Age Sixty-Five. If the benefit of a participant begins after the participant attains age sixty-five (65), the defined benefit dollar limitation applicable to the participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the participant at age sixty-five (65) (adjusted under Subsection 548.01, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age sixty-five (65) is determined as set forth in IRS regulation under section 415(b)(2) of the Code. ()

04. Transition. Benefit increases resulting from the increase in the limitations of section 415(b) of the Code shall be provided to all current and former participants (with benefits limited by section 415(b)) who have an accrued benefit under the plan immediately prior to the effective date of this Section (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under section 415(b)). ()

549. COMPUTATION OF BENEFITS FOR EMPLOYEES OF WITHDRAWN EMPLOYER

01. PERSI's Responsibility. PERSI's responsibility to a withdrawing political subdivision or governmental entity or its employees is limited to the vested accrued actuarial benefits of the system's members upon the date of complete withdrawal, section 59-1326(10) Idaho Code. ()

02. Withdrawal Liability Calculations. On the occasion that a withdrawing political subdivision or governmental entity fails to pay, in full with accrued interest from date of withdrawal, the withdrawal liability calculated in accordance with section 59-1326(7), Idaho Code, PERSI shall exhaust all efforts to collect the outstanding withdrawal liability as follows: ()

a. Collect the full withdrawal liability from withdrawing political subdivision or governmental entity at date of withdrawal. If full withdrawal liability is not paid, then; ()

b. Contract with withdrawing political subdivision or governmental entity, in accordance with section 59-1326(9) and file a lien on the assets of the withdrawing political subdivision or governmental entity. If scheduled payments are not timely made or assets are insufficient or unavailable, then; ()

c. PERSI will pursue collection efforts against the authorizing state agency, political subdivision or governmental entity that caused the withdrawing political subdivision or governmental entity to be formed. If these collection efforts are ineffective, then; ()

d. PERSI will cause an actuarial study to be performed for the withdrawing political subdivision or governmental entity and its employees to determine the actuarial value of the accrued benefits at time of withdrawal and will reduce an employee's benefit to match funded status. ()

550. COMPUTING VALUE OF SICK LEAVE.

For those members who accrue sick leave based upon each month of service, the rate of pay for purposes of computing the monetary value of a retired member's unused sick leave as outlined in Sections 59-1365, 67-5333, and 33-2109A, Idaho Code, shall be the base hourly rate of compensation reported by the employer during the month of separation from employment prior to retirement, not including any temporary increases, bonuses, or payoffs. For those members employed on a contract basis under Section 33-1228, Idaho Code, the rate of pay for purposes of computing the monetary value of a retiring member's unused sick leave based upon each month of service shall be determined at a daily rate by dividing the annual contract amount by the required days of work. No temporary increases, bonuses or payoffs shall be included in the contract amount. Where the daily rate is affected by changes in the work week such as adoption of a four (4) day work week or similar events, adjustments shall be made to convert the daily rate to maintain equity within the pool. No other forms of leave may be converted to sick leave or otherwise considered in computing the value of unused sick leave. ()

551. (RESERVED)

552. SICK LEAVE FUNDING RATES.

The sick leave pools shall be funded by employer contributions as follows: ()

01. State Agencies and Junior College Districts. All employer groups participating in the pools established by Sections 33-2109A and 67-5333, Idaho Code, shall contribute point sixty-five percent (.65%) of employee covered payroll. ()

02. Schools. All employer groups participating in the pool established by Section 33-1228, Idaho Code, shall contribute the percentage of employee covered payroll based on the number of days of paid sick leave permitted during the contract year for certified teachers as set forth in the following table:

Beginning:	July 1, 2006
9-10 days	1.16%
11-14 days	1.26%
More than 14 days	Individual rate to be set by the Retirement Board based on current cost and actuarial data and reviewed annually

Where a four (4) day work week or similar policies have been adopted, adjustments shall be made to convert the number of days of paid sick leave to the contribution level necessary to maintain equity within the pool. ()

03. Subdivisions. All political subdivision or government entity groups participating in the pool established by Section 59-1365, Idaho Code, shall make contributions as provided in Rule 578. ()

553. LIMITATION ON INSURANCE PROGRAMS.

The health, accident, and life insurance programs maintained by state agencies, political subdivisions or government entities as outlined in Sections 59-1365, 33-1228, and 33-2109A, Idaho Code, are limited to plans where the policy holder is the state agency, political subdivision or government entity or a consortium of state agencies, political subdivisions or government entities. Insurance programs outlined in Section 67-5333, Idaho Code, shall be maintained by the state agency, political subdivision or government entity. The board may require plans to sign an agreement before participating. ()

554. PAYMENT OF INSURANCE PREMIUMS.

Upon certification by the state agency, political subdivision or government entity and the insurance carrier that a plan qualifies under Rule 553, of this subchapter, the board may pay the monthly premiums for a retired member using unused sick leave account funds as prescribed by Idaho Code. ()

01. Adjustments. Coverage and premium changes or adjustments must be submitted to PERSI no less than thirty (30) days prior to their effective date unless PERSI has previously agreed in writing to a shorter period. ()

02. Duration of Payments. Premium payments will continue to be made from the unused sick leave account until credits are insufficient to make a premium payment, or until the retiree's death, whichever first occurs.

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555. SEPARATION BY REASON OF RETIREMENT.

Unused sick leave benefits are credited only to employees who are eligible to retire at the time they separate from the state agency, political subdivision or government entity. When an employee separates from service and does not immediately retire, unused sick leave benefits are credited to the member but not available for use unless the member actually retires without intervening employment resulting in PERSI participation. The existence of available unused sick leave credits does not necessarily mean they are usable. A member must also be eligible to participate in the retiree plan offered by the state agency, political subdivision or government entity from which the member retired. Except for school district employees transferring from one (1) district to another, unused sick leave credits may not be transferred from one (1) state agency, political subdivision or government entity to another. If a member negates their retirement under Rule 542 and returns to work for a new PERSI state agency, political subdivision or government entity, unused sick leave credits are also negated and eligibility for unused sick leave credits must be reestablished with the new state agency, political subdivision or government entity.

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556. PROHIBITION AGAINST CASH OPTION.

All state agencies, political subdivisions or government entities participating in any PERSI administered sick leave pool are prohibited from offering or permitting any employee to convert unused sick leave to cash, other forms of leave, or any other benefit, even if the employee is not eligible to receive credits. Failure to comply with this prohibition will result in the state agencies, political subdivisions or government entities inability to participate in PERSI administered unused sick leave pools.

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557. -- 575. (RESERVED)

576. PARTICIPATION IN SUBDIVISION UNUSED SICK LEAVE POOL.

Any PERSI state agency, political subdivision or government entity meeting the following requirements may elect to participate in the unused sick leave pool authorized by Section 59-1365, Idaho Code:

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01. No Current Plan. The state agency, political subdivision or government entity does not participate in any other statutorily created plan that offers benefits for unused sick leave, including but not limited to, those plans created under Sections 33-1228, 33-2109, and 67-5333, Idaho Code.

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02. All Inclusive Participation. All of a participating state agencies, political subdivisions or government entities employees who are PERSI members and who accrue sick leave must be participants in the plan, except that state agencies, political subdivisions or government entities may exclude certain distinctive classes of employees for legitimate business reasons. For example, a city could exclude employees covered by a collective bargaining agreement, or a county may choose to exclude elected officials.

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03. No Other Options for Unused Sick Leave. No employee may be given any option to receive benefits from unused sick leave other than through this plan. For example, no employee, other than those properly excluded under Subsection 576.02, may be given the option of exchanging sick leave for cash or other forms of payment or leave.

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04. Fixed Annual Accrual of Sick Leave. State agency, political subdivision or government entity must comply with a policy that offers a fixed amount of sick leave annually that is applicable to all employees or employee groups. A "personal leave" option that fails to distinguish between sick, vacation, or other forms of leave is not permitted.

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05. Medicare Eligible Retirees. State agencies, political subdivisions or government entities plan must provide coverage to all retired employees eligible for unused sick leave credits, including retirees that become Medicare eligible.

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06. Annual Application. State agency, political subdivision or government entity must annually update and submit an application for participation in the Subdivision Unused Sick Leave Pool on the form prescribed

by PERSI. ()

577. OPERATION OF SUBDIVISION POOL.

Upon separation from employment by retirement, in accordance with Chapter 13, Title 59, Idaho Code, every employee of a participating state agency, political subdivision or government entity shall, upon payment by the state agency, political subdivision or government entity under Rule 578, receive a credit for unused sick leave in the same manner and under the same terms as provided in Section 67-5333(1), Idaho Code. ()

578. FUNDING OF SUBDIVISION POOL.

Participating state agencies, political subdivisions or government entities shall, within ten (10) days of retiree's last day in pay status, pay to PERSI a sum equal to the retiree's unused sick leave credit, together with any administrative fees the board may require. Investment earnings on funds paid into this pool will remain in the pool, together with any reversions due to the death of a retiree, and may be used by the board to pay some or all administrative costs. ()

579. TERMINATION, WITHDRAWAL, OR REMOVAL FROM SUBDIVISION POOL.

Any state agency, political subdivision or government entity failing to meet the requirements of participation provided by Rule 576 shall be terminated from participation in the Subdivision Pool. Any state agency, political subdivision or government entity failing to meet the funding requirements provided by Rule 578 shall be terminated from participation in the Subdivision Pool, provided however, a state agency, political subdivision or government entity may submit a detailed explanation for its failure to meet the funding requirements as required in Rule 578 and subject to PERSI approval. State agencies, political subdivisions or government entities that have withdrawn or have been terminated shall not be allowed to rejoin. ()

580. -- 599. (RESERVED)

600. PAYMENT DATE OF RETIREMENT ALLOWANCE FOR FRF MEMBERS.

A paid firefighter who retires under the provisions of Chapter 14, Title 72, Idaho Code, is entitled to a retirement allowance computed from the date following separation from employment, payable at the end of the calendar month following separation from employment. ()

601. FIREFIGHTER RETIREMENT ALLOWANCE.

Notwithstanding Rules 525 and 526, of this subchapter, the retirement allowances of firefighter members, as defined by Section 59-1391(b), Idaho Code, shall be determined pursuant to the provisions of Chapter 14, Title 72, Idaho Code. ()

602. REEMPLOYMENT OF RETIRED FRF FIREFIGHTER.

A paid firefighter retired under the provisions of Chapter 14, Title 72, (FRF), Idaho Code, who returns to employment as a paid firefighter with the same fire department from which retired shall be considered reemployed in the manner provided for PERSI members by Section 59-1356(1), Idaho Code. Retirement benefits shall then terminate and contributions shall again commence under conditions specified prior to retirement. The terminated benefit shall resume upon subsequent retirement with adjustments made in the manner prescribed by Section 59-1356(1), Idaho Code, as they would apply to the member's retirement benefit entitlement computed under the provisions of Chapter 14, Title 72, Idaho Code.

Statutory References: Section 59-1356, Idaho Code. ()

603. -- 624. (RESERVED)

625. PURCHASE OF SERVICE GENERALLY.

No member may purchase more than forty-eight (48) months of membership service, whether purchased under Section 59-1362, or 59-1363, Idaho Code, or a combination thereof. In all cases, the cost of purchasing service shall be the full actuarial costs, as determined by the board, of providing additional benefits resulting from the purchased service. Service may only be purchased at the time of retirement. In no event can a member revoke a purchase of service after payment has been made. ()

626. TIME OF RETIREMENT.

Within ninety (90) days before a member's effective date of retirement, the member may request the cost of service to

be purchased. Costs provided for purchased service are valid only for the effective date requested. Purchased service will be calculated into the member's benefit only to the extent that it is paid by the effective date. In no event shall service be credited for which payment has not been made. Service may be purchased with after-tax dollars or with eligible rollover distributions. The member's service class at the time of purchase determines the class of service that may be purchased. ()

627. RETIREMENT DELAYED OR NEGATED AFTER PURCHASE.

If a member purchases service and thereafter revokes their application for retirement or negates their retirement as provided in Rule 542, the contributions made to purchase the service shall remain in the system until a distributable event occurs. If the distributable event results in payment of a monthly retirement benefit or an optional death benefit, the purchase price of the service previously purchased will be recalculated based on factors existing on the date the new benefit becomes effective. If, based on the new factors, the purchase price is higher than previously determined, the number of months purchased will be reduced to reflect the higher cost unless the member elects to pay the difference. If the purchase price is lower, the difference will be paid to the member as a lump-sum payment within sixty (60) days after the date of retirement unless the member elects to convert the difference into additional months and can do so without exceeding the forty-eight (48) month limit, the IRS limit referenced in Subsection 705.05, or any other statutory limitation, including the limitation in Section 59-1342(6), Idaho Code. ()

628. TREATMENT OF PURCHASE OF SERVICE CONTRIBUTIONS.

Contributions made for purposes of purchasing service, and interest earnings thereon, are not considered for purposes of determining death benefits under Section 59-1361(3), Idaho Code, and distributions under Section 59-1309(5), Idaho Code. When determining death benefits under Section 59-1361(3), Idaho Code, first calculate two hundred percent (200%) of accumulated contributions, excluding contributions and interest related to purchased service, then add member contributions and interest related to purchased service. Member contributions and interest will also be included in any separation benefit. In no event shall employer contributions for purchased service be included in any separation benefit or lump-sum death benefit. ()

629. EMPLOYER PARTICIPATION.

State agency, political subdivision or government entity participation must be in the form of lump-sum payments at the time of retirement. In the event a state agency, political subdivision or government entity makes a contribution on behalf of a member and a distribution other than periodic payments occurs prior to the actual retirement effective date, the state agency, political subdivision or government entity may claim a credit against future contributions equal to the amount of the contribution. State agency, political subdivision or government entity contributions must be accompanied by or preceded by a written statement endorsed by the governing body or officer of the state agency, political subdivision or government entity verifying that the participation is properly authorized and that the state agency, political subdivision or government entity indemnifies PERSI against any loss resulting from failure of the state agency, political subdivision or government entity, or any person acting on its behalf, to act within its authority. ()

630. ADDITIONAL LIMITS ON PURCHASED SERVICE.

The Internal Revenue Code imposes limits on the amount of retirement benefits that can be paid to a retiree under a defined benefit plan. Benefits acquired through purchase of service are subject to these limits for some purposes. In no event can a member purchase service that would result in the member exceeding the limits imposed in IRC Section 415(n)(1)(A). In addition, a member's initial retirement benefit, including purchased service, continues to be subject to the limitation in Section 59-1342(6), Idaho Code. ()

631. -- 649. (RESERVED)

SUBCHAPTER G - PERSI GAIN SHARING RULES
RULES 650 THROUGH 755

650. EXISTENCE OF EXTRAORDINARY GAINS.

The existence of extraordinary gains triggers the possibility that allocations will be made as provided in Section 59-1309, Idaho Code. However, the existence of extraordinary gains does not obligate the retirement board to make an allocation. The Board may choose not to allocate extraordinary gains, or it may choose to allocate all or part of the extraordinary gains. Extraordinary gains exist when, at the close of the fiscal year, the value of plan assets exceeds

plan liabilities as determined by the actuary, plus a sum necessary to absorb a one (1) standard deviation market event without increasing contribution rates, as determined by the Board. The amount of extraordinary gains available for possible distribution equals the amount by which the assets exceed the sum of the liabilities and the one standard deviation. ()

651. VALUE OF PLAN ASSETS.

This is the total assets held in the PERSI base plan, as reported in the actuarial valuation at the end of the fiscal year. ()

652. PLAN LIABILITIES.

This is the actuarial liability of the PERSI base plan, including but not limited to, the cost of the proposed COLA to be effective in March following the close of the fiscal year, the cost of any benefit enhancements to the base plan approved by the legislature, and the cost of actuarial gains and losses, as reported in the actuarial valuation for the fiscal year. ()

653. ONE STANDARD DEVIATION.

This is the amount of reserve necessary to absorb normal market fluctuations and is a function of the risk associated with investment holdings and strategies, and will be determined by the Board based on those factors. ()

654. BOARD DISCRETION.

The Board retains full discretion in determining whether to allocate extraordinary gains when they exist. Because of the broad range of factors that might be relevant to such a determination, and to assure that the Board will not be limited in exercising its discretion, these rules do not attempt to identify any of the factors that might be considered in the Board's fiduciary capacity. When extraordinary gains exist, the Board will decide whether they will be allocated no later than the first day of December following the end of the fiscal year. Such decision shall be in writing and shall constitute an amendment to the plan document for purposes of the Internal Revenue Code of 1986, as amended, or any successor thereto. In the absence of any such decision, the allocation for that year shall be zero (0.00). ()

655. -- 674. (RESERVED)

675. ALLOCATION BETWEEN GROUPS.

If extraordinary gains exist, and the Board determines that all or part of such gains should be allocated, an allocation will be made among the three (3) groups identified by Section 59-1309, Idaho Code. The three (3) groups and allocations are: ()

- a. Active PERSI members - 38 percent (38%); ()
- b. PERSI retirees - twelve percent (12%); and ()
- c. PERSI employers - fifty percent (50%) ()

676. -- 699. (RESERVED)

700. ACTIVE MEMBER ALLOCATION.

After the amount to be allocated to the active member group has been determined, it shall be allocated among the members of the group. The active member allocation determines each member's initial share before considering any applicable individual limits. Each member's initial share shall be determined by dividing that member's accumulated contributions in the base plan at the close of the fiscal year by the total accumulated contributions in the base plan of all members of the group at the close of the fiscal year, multiplied by the amount allocated to the active member group. In no event shall a member's initial share, before considering individual limits, exceed the maximum annual contribution limit under Section 415(c) of the Internal Revenue Code applicable for the limitation year. ()

701. MINIMUM ALLOCATION AMOUNT.

Due to the costs associated with maintaining individual choice accounts, no allocation shall be made to any member whose allocation share does not exceed thirty-eight dollars (\$38) after considering individual limits, unless the member had a PERSI choice account on the last day of the fiscal year and has not withdrawn funds before the allocation date. ()

702. ACTIVE MEMBER.

A member participates in the active member allocation only if he is an active member as defined in this subchapter. Whenever a member is placed on leave of absence under circumstances making that member eligible for benefits under USERRA, the employer shall notify PERSI in writing within thirty (30) days and attach a copy of the member's orders. ()

703. ACCUMULATED CONTRIBUTIONS.

For purposes of allocating extraordinary gains within the active member group, accumulated contributions do not include contributions or interest related to the purchase of permissive service credits or contributions or interest in the Choice Plan or accounts. ()

704. TRANSFER TO DEFINED CONTRIBUTION CHOICE ACCOUNTS.

After each member's initial share has been determined, it will be transferred to an individual account as permitted under Section 414(k) of the Internal Revenue Code, subject to individual limits imposed by the Internal Revenue Code. The Board may transfer allocations anytime after necessary compensation data is received and processed by the Board. ()

705. LIMITATIONS ON ALLOCATION.

In no event shall a member's final allocation exceed the limits imposed by Section 415(c) of the Internal Revenue Code, based on compensation earned during the calendar year that included the end of the fiscal year. ()

706. INTERVENING RETIREMENT.

When a member is included in the active member pool but retires prior to the transfer of allocations, the member's allocation will be made as a one-time payment directly to the member rather than a transfer to an individual account. Such allocations will not be limited by Rule 705 but will be subject to the limitations of Rule 729. ()

707. INTERVENING WITHDRAWAL OF CONTRIBUTIONS.

When a member is included in the active member pool but terminates prior to the transfer of allocations, the allocation will be made to the member's individual account if the member has not withdrawn contributions from the Base account prior to the date of transfer of the allocation. No member who has withdrawn contributions from the Base account prior to the transfer of the allocation is eligible to receive an allocation. ()

708. INTERVENING DEATH OF ACTIVE MEMBER.

When a member would have been included in the active member allocation but dies prior to the transfer of allocations, no allocation shall be made to the member, beneficiary or estate except that an optional death benefit recipient will receive the active member's allocation as limited by Rule 729. ()

709. TREATMENT OF GAIN SHARING ALLOCATIONS IN THE CHOICE ACCOUNT.

Gain sharing allocations transferred to individual Choice Accounts have no effect on an individual's Base Plan benefit. Gain sharing allocations, and the earnings thereon, will be accounted for separately from other Choice Plan contributions but will be treated as one plan for purposes of reporting, investing, distributions, and fees to the extent they are applicable. Related provisions of the Plan adopted by the Board to facilitate voluntary and employer contributions are applicable to gain sharing allocations to the extent not inconsistent with these rules and Sections 59-1308 and 59-1309, Idaho Code. However, no loans or hardship withdrawals may be taken against gain sharing account balances. ()

710. -- 724. (RESERVED)

725. RETIREE ALLOCATION.

After the amount to be allocated to the retiree group has been determined, it shall be allocated among the members of the group. The retiree allocation determines each member's share before considering any applicable individual limits. Each member's initial share shall be determined by dividing that retiree's monthly benefit at the close of the fiscal year by the total monthly benefits payable to all members of the group at the close of the fiscal year, multiplied by the amount allocated to the retiree group. ()

726. RETIREE.

For purposes of allocating extraordinary gains, a member must be a retiree as defined in this subchapter. ()

727. MONTHLY BENEFIT.

This is the monthly benefit for the last month of the fiscal year but does not include benefits related to other months that may also have been paid during the last month of the fiscal year. In no event shall a retiree's share be determined based on more than the retiree's annual benefit, not including any gain sharing allocations, divided by twelve (12). ()

728. PAYMENT OF ALLOCATION.

After each retiree's initial share has been determined, it will be paid no later than February 1 following the close of the fiscal year directly to the retiree either together with the retiree's monthly benefit or separately, subject to individual limits imposed by the Internal Revenue Code. ()

729. LIMITATIONS ON ALLOCATION.

Prior to allocation, a retiree's initial share shall be further limited as necessary to comply with the limits of Section 415(b) of the Internal Revenue Code. ()

730. INTERVENING DEATH OF A RETIREE.

When a retiree is included in the retiree allocation but dies prior to the transfer of allocations, no allocation shall be made unless benefit payments are continuing to be made to a contingent annuitant. ()

731. INTERVENING REEMPLOYMENT.

When a retiree is included in the retiree allocation but becomes reemployed as defined in Section 59-1356, Idaho Code, prior to the date of distribution, the retiree allocation shall be made in the form of an active member allocation, and shall be subject to active member limitations. ()

732. NEGATED RETIREMENT.

Gain sharing allocations received by a retiree are not included in the amounts required to be repaid when negating retirement under Rule 542. ()

733. -- 749. (RESERVED)

750. EMPLOYER ALLOCATION.

After the amount to be allocated to the employer group has been determined, it shall be allocated among the members of the group. Each employer's share shall be determined by dividing that employer's contribution liability for the fiscal year by the total contribution liability for all members of the group for the fiscal year, multiplied by the amount allocated to the employer group. ()

751. EMPLOYER.

Participation in the employer pool is limited to those entities defined as an employer in this subchapter. ()

752. CONTRIBUTION LIABILITY.

This includes only employer contributions that are accrued during the fiscal year and required to be paid by Section 59-1322, Idaho Code, unreduced by gain sharing credits. It does not include contributions made to fund sick leave pools, to pay costs of other plans such as the Firefighters Retirement Fund, or to contributions required by Sections 33-107A and 33-107B, Idaho Code. Only adjustments related to fiscal year contributions will be considered. ()

753. CREDIT OF ALLOCATION.

After each employer's share has been determined, it will be credited against the employer's future contribution invoices. The credits shall be applied only to offset future employee and employer contributions required to be remitted by Section 59-1325(1), Idaho Code, until the credit is exhausted. An employer may elect to use the credits solely against employer contributions to the extent that no carry-over credits (as described in rule 754) result. ()

754. CARRY-OVER OF CREDIT.

Should the credit exceed the employer's contribution invoices for the succeeding twelve (12) month period, any remaining credits will carry over to the following year together with an additional credit representing an interest payment. The interest credit shall equal the balance of remaining credits multiplied by a ratio representing the regular rate of interest. This process shall be repeated annually until all credits have been used. ()

755. WITHDRAWAL OF EMPLOYER.

When an employer is included in the employer pool but withdraws from the system as provided in Section 59-1326, Idaho Code, prior to allocation of credits, the employer shall not be entitled to receive any credits. When an employer is entitled to carry-over credits but withdraws prior to using all its credits, it shall not be entitled to additional credits based on interest payments. ()

756. -- 999. (RESERVED)

59.02.01 – RULES FOR THE JUDGES’ RETIREMENT FUND

Subchapter A – General Provisions Rules 001 Through 099

000. LEGAL AUTHORITY (RULE 0).

The Rules for the Judges’ Retirement Fund rules are adopted under the legal authority of Section 1-2012, Idaho Code.
(7-1-14)

001. TITLE AND SCOPE (RULE 1).

01. Title. The title of this chapter is IDAPA 59.02.01, “Rules for the Judges’ Retirement Fund.”
(7-1-14)

02. Scope. This chapter relates to retirement under the Judges’ Retirement Fund.
(7-1-14)

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

Written interpretations of these rules, to the extent they exist, are available from PERSI (Public Employee Retirement System of Idaho), at the locations listed in Rule 4 of these rules.
(7-1-14)

003. ADMINISTRATIVE APPEAL (RULE 3).

Administrative appeals are conducted pursuant to IDAPA 59.01.01, “Rules of Administrative Procedure,” Rules 101 through 104 and 150 through 789.
(7-1-14)

004. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS (RULE 4).

Office hours are 8 a.m. to 5 p.m. Monday through Friday. PERSI’s mailing and street addresses, telephone numbers, and fax numbers are as follows:
(7-1-14)

005. PUBLIC RECORDS ACT COMPLIANCE (RULE 5).

All rules required to be adopted by this chapter are public records.
(7-1-14)

006. CITATION (RULE 6).

The official citation of this chapter is IDAPA 59.02.01.000, et seq. For example, this section’s citation is IDAPA 59.02.01.006. In documents submitted to the Board or issued by the Board these rules may be cited as Rules for the Judges’ Retirement Fund and section number less leading zeros. For example, this rule may be cited as Rules for the Judges’ Retirement Fund Rule 7.
(7-1-14)

007. EFFECTIVE DATE (RULE 7).

Unless otherwise indicated in the bracketed material following each rule, the effective date of every rule in this chapter is July 1, 2014.
(7-1-14)

008. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

The following definitions apply to this chapter:
(7-1-14)

01. Accrued Benefit. The actuarial value of the retirement benefit to which the Member is entitled under the Judges’ Retirement Fund upon attainment of Normal Retirement Age.
(7-1-14)

02. Active Member. Each justice or judge who participates in the Judges’ Retirement Fund as provided by Idaho Code.
(7-1-14)

03. Administrator. The Board.
(7-1-14)

04. Annual Additions. Annual additions are the total of all after-tax Member contributions in a year (not including rollovers) and forfeitures allocated to a Member’s account under the Judges’ Retirement Fund and all other qualified plans to which contributions are made based on the Member’s service with the Employer.
(7-1-14)

05. Beneficiary. The designated person (or, if none, the Member’s estate) who is entitled to receive benefits under the Plan after the death of a Member.
(7-1-14)

- 06. Board.** The retirement board established in Section 59-1304, Idaho Code. (7-1-14)
- 07. Code.** The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered. (7-1-14)
- 08. Compensation.** All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Member's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Member's gross income for the calendar year but for a compensation reduction election under sections 125, 132(f), 401(k), 403(b), or 457(b) of the Code. (7-1-14)
- 09. Contingent Annuitant.** The person designated by a Member under certain retirement options to receive payments upon the death of the Member. The person so designated must be born and living on the effective date of retirement. (7-1-14)
- 10. Designated Beneficiary.** The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-4, Q&A-4, of the Treasury regulations. (7-1-14)
- 11. Differential Wage Payments.** Differential Wage Payments as defined in 26 U.S.C. 3401(h). A differential wage payment generally refers to an employer payment to an employee called to active duty in the uniformed services for more than thirty (30) days that represents all or a portion of the compensation he would have received from the employer if he were performing services for the employer. (7-21-15)
- 12. Employer.** The common law employer of a Member. (7-1-14)
- 13. Judges' Retirement Fund.** The Judges' Retirement Fund established under Title 1, Chapter 20, Idaho Code, and rules applicable to the Judges' Retirement Fund. The Judges' Retirement Fund is intended to satisfy Code section 401(a) as applicable to governmental plans described in Code section 414(d). It is maintained for the exclusive benefit of Members and their beneficiaries. (7-1-14)
- 14. Member.** An individual who is currently accruing benefits or who has previously accrued benefits under the Plan and who has not received a distribution of his entire benefit under the Plan. (7-1-14)
- 15. Normal Retirement Age.** The age (or combination of age and years of service) at which a Member is entitled to an actuarially unreduced retirement benefit under the Plan. A Member will be fully vested upon attainment of Normal Retirement Age. (7-1-14)
- 16. Plan.** The plan of benefits under the Judges' Retirement Fund. (7-1-14)
- 17. Required Beginning Date.** The date specified in Rule 100 of these rules. (7-1-14)
- 18. Severance from Employment.** The date that the Member dies, retires, or otherwise has a separation from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code). (7-1-14)
- 011. -- 099. (RESERVED)**

Subchapter B -- Distributions
Rules 100 Through 250

100. REQUIRED MINIMUM DISTRIBUTIONS (RULE 100).

- 01. Default Application of Federal Requirements.** With respect to distributions under the Judges'

Retirement Fund, and except as provided in Subsection 100.06, the Judges' Retirement Fund will apply the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code (Code) in accordance with a good faith interpretation of section 401(a)(9), notwithstanding any provision of the Judges' Retirement Fund to the contrary. (7-21-15)

02. Required Beginning Date. Except as otherwise provided in Subsections 100.03 through 100.06, distributions under the Judges' Retirement Fund shall begin not later than April 1 following the later of: (7-21-15)

a. The calendar year (hereinafter referred to as the "Commencement Year") in which the member reaches age seventy and one half (70 ½); and (7-21-15)

b. The year in which he retires. (7-21-15)

03. Lifetime Distributions. Distribution shall be made over the life of the Member or the lives of the Member and his beneficiary; or over a period certain not extending beyond the life expectancy of the member or the joint life and last survivor expectancy of the member and his beneficiary. (7-21-15)

04. Timing of Required Distributions. A required distribution shall be deemed to have been made during the Commencement Year if actually made by the following April 1, but such delayed distribution shall not change the amount of such distribution, and the distribution otherwise required during the subsequent calendar year shall be calculated as if the first distribution had been made on the last day of the Commencement Year. (7-21-15)

05. Adjustment of Required Distributions. Benefits paid prior to the Commencement Year shall reduce the aggregate amount subject to (but shall not otherwise negate) the minimum distribution requirements described herein. (7-21-15)

06. Annuity Benefits Payable on Death of a Member. All death benefits payable in the form of an annuity will begin to be paid as soon as administratively practicable after the member's death, but must in any event begin to be paid before the end of the calendar year following the calendar year in which the member died. (7-21-15)

07. Death Benefits. All death benefits payable in a lump sum will be distributed as soon as administratively practicable after request, but must in any event be distributed within fifteen (15) months of the member's death, unless the identity of the beneficiary is not ascertainable. (7-21-15)

101. MAXIMUM LIMITATIONS ON BENEFITS (RULE 101).

Beginning effective January 1, 2002, the "defined benefit dollar limitation" is one hundred sixty thousand dollars (\$160,000), as adjusted, effective January 1 of each year thereafter, under section 415(d) of the Internal Revenue Code (Code) in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies. The "maximum permissible benefit" is the defined benefit dollar limitation (adjusted where required, as provided in Subsection 101.01 and, if applicable, in Subsections 101.02 through 101.04). (7-21-15)

01. Less Than Ten Years of Service. If the Member has fewer than ten (10) years of participation in the Judges' Retirement Fund, the defined benefit dollar limitation shall be multiplied by a fraction: (7-21-15)

a. The numerator of which is the number of years (or part thereof) of participation in the Judges' Retirement Fund; and (7-21-15)

b. The denominator of which is ten (10). (7-21-15)

02. Benefit Begins Prior to Age Sixty-Two. If the benefit of a Member begins prior to age sixty-two (62), the defined benefit dollar limitation applicable to the Member at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the Member at age sixty-two (62) (adjusted under Rule 101.01, if required). The defined benefit dollar limitation applicable at an age prior to age sixty-two (62) is determined as set forth in IRS regulation under section 415(b)(2) of the Code. (7-21-15)

03. Benefit Begins at Age Sixty-Five. If the benefit of a Member begins after the Member attains age sixty-five (65), the defined benefit dollar limitation applicable to the Member at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the Member at age sixty-five (65) (adjusted under Rule 101.01, if required.) The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age sixty-five (65) is determined as set forth in IRS regulation under section 415(b)(2) of the Code. (7-21-15)

04. Transition. Benefit increases resulting from the increase in the limitations of section 415(b) of the Code shall be provided to all current and former Members (with benefits limited by section 415(b)) who have an accrued benefit under the Judges' Retirement Fund immediately prior to the effective date of this Rule (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under section 415(b).) (7-21-15)

05. Aggregation. If any member participates in two (2) or more qualified defined benefit plans maintained by the employer (or a predecessor employer), the combined benefits from all such plans may not exceed the "maximum permissible benefit" described in this Rule 101. (3-29-17)

102. MAXIMUM LIMITATION ON ANNUAL ADDITIONS (RULE 102).

01. Annual Additions Limitation. Effective January 1, 2002, annual additions shall not exceed the lesser of: (7-1-14)

a. Forty thousand dollars (\$40,000); or (7-1-14)

b. One hundred percent (100%) of the Member's compensation. (7-1-14)

02. Annual Adjustments. As of January 1 of each calendar year on and after January 1, 2002, the dollar limitation in Subsection 102.01 of these rules, with respect to both active and retired members, shall be adjusted for increases in the cost of living, taking into consideration applicable guidelines. (7-1-14)

03. Other Qualified Plans. To the extent that any Member of the Judges Retirement Plan is also a member of any other qualified plan, and annual additions to all plans covering the Member would otherwise exceed the limits set forth above, annual additions to such other qualified plan shall be reduced to the extent necessary to avoid exceeding the limitations on annual additions. (7-1-14)

103. ROLLOVER DISTRIBUTIONS (RULE 103).

01. Direct Rollovers. A Member of the Judges' Retirement Fund or a beneficiary of a Member (including a Member's former spouse who is the alternate payee under an approved domestic relations order) who is entitled to an eligible rollover distribution may elect, at the time and in the manner prescribed by the Administrator, to have all or any portion of the distribution paid directly to an eligible retirement plan specified by the Member in a direct rollover. Effective January 1, 2006, in the event of a mandatory distribution greater than one thousand dollars (\$1,000), if the Member does not elect to have such distribution paid directly to an eligible retirement plan specified by the Member in a direct rollover or to receive the distribution directly, then the plan administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the plan administrator. (7-1-14)

02. Eligible Rollover Distribution Defined. For purposes of this Rule, an eligible rollover distribution means any distribution of all or any portion of a Member's account balance, except that an eligible rollover distribution does not include (a) any installment payment for a period of ten (10) years or more, (b) any distribution made as a result of an unforeseeable emergency, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code section 401(a)(9). In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution. Effective January 1, 2008, an eligible retirement plan shall also mean a Roth IRA described in section 408A of the Code. (7-1-14)

03. After-Tax Contributions. For purposes of the direct rollover provisions in Rule 103.01, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for the amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. (7-21-15)

04. Alternate Payees. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse, who is the alternate payee under a domestic retirement order, approved as provided in Rule 402 are distributees with regard to the interest of the spouse or former spouse. (7-21-15)

05. Transfers to Non-Spouse Beneficiaries. This Rule 103.05 applies to distributions made on or after July 1, 2008. Notwithstanding any provision of the Judges' Retirement Fund to the contrary that would otherwise limit the options of the Beneficiary of a deceased Member who is not the Member's spouse, the administrator shall, upon the request of such a Beneficiary transfer a lump sum distribution to the trustee of an individual retirement account established under Section 408 of the Code in accordance with the provisions of Code section 402(e)(11). (7-21-15)

104. -- 250. (RESERVED)

Subchapter C -- Assumptions
Rules 251 Through 299

251. ACTUARIAL ASSUMPTIONS TO BE SPECIFIED (RULE 251).

Whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions will be specified in a manner that precludes employer discretion. (7-1-14)

252. ACTUARIAL TABLES (RULE 252).

The actuarial tables used for determining optional retirement benefits are set forth in Appendix A, which is hereby incorporated by reference and made a part hereof. (7-1-14)

253. -- 299. (RESERVED)

Subchapter D -- Contribution Rates
Rule 300 Through 349

300. EMPLOYER CONTRIBUTION RATE (RULE 300).

The employer contribution rate shall be fifty-five point twenty-eight percent (55.28%) of salaries until next determined by the Board. Beginning July 1, 2017, the employer contribution rate shall be sixty-two point fifty-three percent (62.53%) of salaries until next determined by the Board. (7-1-17)

301. EMPLOYEE CONTRIBUTION RATE (RULE 301).

The employee contribution rate shall be ten point twenty-three percent (10.23%) of salary until next determined by the Board. Beginning July 1, 2017, the employee contribution rate shall be eleven point fifty-seven percent (11.57%) of salaries until next determined by the Board. (7-1-17)

302. VACATION AND CONTRACTUAL PAYMENTS SUBJECT TO CONTRIBUTIONS (RULE 302).

Compensation paid for vacation is salary subject to employee and employer contributions. (7-1-14)

303. REPORTS (RULE 303).

The Employer shall provide to the Board such reports, including compensation and contribution reports, as are required by the Board to verify contributions benefits required or provided and unless extended in writing by the

executive director such reports shall be provided no later than five (5) business days after each pay date. (7-1-14)

304. -- 349. (RESERVED)

Subchapter E -- Disability Retirement
Rules 350 Through 399

350. APPLYING FOR DISABILITY RETIREMENT (RULE 350).

Eligible members may apply for disability retirement, as provided for in Section 1-2001(4)(a), Idaho Code, by completing a required form available from any PERSI office. The application process may include an interview by a Board representative. Applicants must release all medical records and information to the Board or its agent. (7-1-14)

351. INITIAL APPLICATION REVIEW (RULE 351).

Applications will first be reviewed to determine whether the applicant meets applicable eligibility requirements. If eligibility requirements are met, the application will proceed to disability assessment review. If all eligibility requirements are not met, the applicant will be notified in writing. (7-1-14)

352. DISABILITY ASSESSMENT REVIEW (RULE 352).

An applicant will be assessed to determine whether he qualifies for disability retirement under the applicable standard. The assessment may include without limitation, records review, medical and psychological examinations, vocational assessments, or any combination thereof as determined by the Board. Failure to timely comply with any request made by the Board during the assessment process shall result in automatic denial of disability retirement. At the conclusion of the assessment process, the Board will notify the applicant in writing whether or not he qualifies for disability retirement. (7-1-14)

353. RECONSIDERATION OF DISABILITY ASSESSMENT DECISION (RULE 353).

Applicants, who are denied disability retirement as a result of an adverse disability assessment decision, and wish to contest that decision, are required to participate in a reconsideration process. A request for reconsideration must be made within thirty (30) days of the issuance of the disability assessment decision. Any additional information the applicant wishes to be considered must be submitted within thirty (30) days of the request for reconsideration. The additional information will be reviewed and a reconsideration decision will be issued in writing to the applicant. (7-1-14)

354. ADMINISTRATIVE REVIEW OF THE RECONSIDERATION DECISION (RULE 354).

A reconsideration decision shall be considered a final decision, and may be appealed to the Board for review. In any related administrative hearing, the applicant shall be limited to presenting facts and evidence made available in the reconsideration process. No new or additional evidence may be presented at the hearing. If the applicant has additional facts or evidence that were not made available during the assessment or reconsideration process, the applicant must submit a new application for disability retirement, proceed again through the assessment process, and pay the costs associated with the second or subsequent assessment process. This rule is intended to promote the efficient use of fund resources by encouraging full and complete disclosure of information during the disability assessment process. (7-1-14)

355. DELEGATION (RULE 355).

The Board may, by contract or otherwise, delegate all or part of these processes to third parties. Where such delegation has been made, the term "Board" includes those third parties. Where such delegation has been made, the term "Board" includes those third parties. (7-1-14)

356. REASSESSMENT OF DISABILITY RETIREES (RULE 356).

A disability retiree is subject to reassessment of his disability at any time to determine whether he continues to be disabled under the standard in Section 1-2001(4)(a), Idaho Code. However, after two (2) years of continuous disability retirement, a disability retiree is not required to undergo medical examinations more often than every twelve (12) months. A disability retiree notified that he has been selected for reassessment is under the same obligation as applicants to supply information. (7-1-14)

357. BURDEN ON APPLICANT (RULE 357).

Applicant must demonstrate that, on or before applicant's last day of employment, he was disabled under the disability standard. The last day of employment is the last day applicant earned compensation, including annual leave and sick leave. (7-1-14)

358. STATUTORY STANDARD (RULE 358).

In applying the disability standard in Section 1-2001(4)(a), Idaho Code, the applicant is prevented from further performance of the duties of his office if the applicant is permanently prevented, due to bodily injury or disease, from performing every substantial and material duty of his office. (7-1-14)

359. ATTORNEY'S FEES AND COSTS (RULE 359).

Attorney's fees and costs incurred by an applicant in his efforts to obtain disability retirement are the sole responsibility of the applicant and shall not be paid by the Board except for fees related to judicial review for which applicant is found to be entitled under applicable law. (7-1-14)

360. -- 399. (RESERVED)

Subchapter F - Miscellaneous Provisions
Rules 400 Through 999

400. ADMINISTRATIVE PROCEDURE -- CROSS REFERENCE (RULE 400).

See IDAPA 59.01.01, "Rules of Administrative Procedure of PERSI," concerning rules for administrative procedure. (7-1-14)

401. POST RETIREMENT ALLOWANCE ADJUSTMENTS (RULE 401).

01. Adjustments Under Section 59-1355, Idaho Code. For those retirees whose post retirement allowance adjustment is to be determined in accordance with Section 59-1355, Idaho Code, the Board shall annually consider the post retirement cost of living adjustment (COLA) pursuant to Section 59-1355, Idaho Code. The Board has the discretion afforded under Section 59-1355, Idaho Code, related to a discretionary and/or retro-active COLA. The Board shall annually consider the COLA no later than the December Board meeting of each year with an effective date of July 1 of the next year. (7-1-14)

02. Adjustments Under Section 1-2001(2)(a)(ii). For those retirees whose COLA is to be determined in accordance with Section 1-2001(2)(a)(ii), Idaho Code, the COLA, if any, shall have an effective date of July 1 of the applicable year. (7-1-14)

402. APPROVED DOMESTIC RETIREMENT ORDERS (RULE 402).

As permitted under Code section 414(p)(11), the Plan shall recognize and give effect to domestic retirement orders that have been approved in accordance with Plan procedures. An order shall be approved only if it substantially meets the requirements for a qualified domestic relations order under Code section 414(p), except for subsection (9) thereof, as determined by the Administrator or its agent. Amounts segregated for the accounts of alternate payees pursuant to a Plan approved domestic retirement order shall be available for immediate distribution to the alternate payee. Distributions pursuant to a domestic retirement order to an alternate payee who is a spouse or former spouse of the Member shall be taxable to the alternate payee rather than the Member to the extent permitted under Code Section 414(p)(12). Distributions pursuant to a qualified domestic relations order to an alternate payee who is not a spouse or former spouse of the Member shall be taxable to the Member. (7-1-14)

403. RETIREMENT APPLICATION AND SPOUSAL CONSENT (RULE 403).

A member is required to complete and submit a retirement application and select either a regular or optional retirement allowance. The member's signature must be notarized. The application for retirement indicating the election made by the retiring member shall also be signed by the spouse certifying he understands and consents to the election made by the member. The spouse's signature must be notarized. If an inactive member reaches service retirement age, or an active member who has reached service retirement age separates from service, and has failed to complete and submit an approved retirement application and select either a regular or optional retirement allowance within ninety (90) days thereafter, the member shall be deemed to have selected a regular retirement allowance and no other selection shall be required or permitted. (7-1-14)

404. FORFEITURES (RULE 404).

Forfeitures will not be applied to increase the benefits any member would otherwise receive. (7-1-14)

405. PRE-ERISA VESTING (RULE 405).

Upon any termination of the Plan or upon any complete discontinuance of contributions under the Plan, the rights of all Members to benefits accrued to the date of such termination or discontinuance, to the extent then funded, shall become one hundred percent (100%) vested. (7-1-14)

406. EXCLUSIVE PURPOSE (RULE 406).

The Board shall hold the assets of the Judges' Retirement Fund in trust for the exclusive purpose of providing benefits to Members and Beneficiaries and paying reasonable expenses of administration. It shall be impossible by operation of the Judges' Retirement Fund, by termination, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by other means, for any part of the corpus or income of the Judges' Retirement Fund, or any funds contributed thereto, to inure to the benefit of any Employer or otherwise be used for or diverted to purposes other than providing benefits to Members and Beneficiaries and defraying reasonable expenses of administering the Judges' Retirement Fund. (7-21-15)

407. BENEFITS DURING MILITARY SERVICES (RULE 407).

01. Death Benefits. (7-21-15)

a. This subsection 407.01 applies to a member of the Judges' Retirement Fund who dies on or after January 1, 2007, while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code. (7-21-15)

b. The period of military service that results in the member's death will be counted in the determination of whether the member qualifies for the death benefit described in section 2009-1(b) to the extent required by Code Section 401(a)(37), (7-21-15)

02. Determination of Return to Employment for Benefit Accrual Purposes. (7-21-15)

a. This subsection 407.02 applies to a member of the Judges' Retirement Fund who becomes disabled or dies on or after January 1, 2007, while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code. (7-21-15)

b. For benefit accrual purposes, a member of the Judges' Retirement Fund shall be treated as having returned to employment on the day before the death or disability and then terminated on the date of death or disability to the extent permitted by Code Section 414(u)(8). (7-21-15)

03. Differential Wage Payments. (7-21-15)

a. This subsection 407.02 applies to a member of the Judges' Retirement Fund who, on or after January 1, 2009, receives differential wage payments from his or her Employer while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code. (7-21-15)

b. A member of the Judges' Retirement Fund shall be treated as employed by the Employer while performing qualified military service to the extent required by Code Section 3401(h). (7-21-15)

408. -- 999. (RESERVED)

IDAHO ADMINISTRATIVE CODE
Public Employee Retirement System of Idaho

IDAPA 59.02.01
Rules for the Judges' Retirement Fund

APPENDIX A

Judges' Retirement Fund of the State of Idaho
100% Contingent Annuitant Factors for Spouses
Judges hired before July 1, 2012

Spouse																		
Judge	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57
50	0.92242	0.92474	0.92710	0.92949	0.93192	0.93437	0.93685	0.93933	0.94182	0.94431	0.94678	0.94923	0.95166	0.95406	0.95641	0.95872	0.96097	0.96316
51	0.91758	0.91995	0.92236	0.92482	0.92732	0.92985	0.93241	0.93500	0.93759	0.94019	0.94278	0.94536	0.94792	0.95045	0.95296	0.95541	0.95782	0.96016
52	0.91243	0.91484	0.91731	0.91983	0.92240	0.92500	0.92765	0.93032	0.93302	0.93572	0.93843	0.94113	0.94382	0.94650	0.94915	0.95176	0.95432	0.95683
53	0.90695	0.90940	0.91192	0.91449	0.91712	0.91979	0.92251	0.92527	0.92806	0.93087	0.93369	0.93651	0.93934	0.94215	0.94494	0.94771	0.95043	0.95310
54	0.90114	0.90362	0.90618	0.90880	0.91148	0.91422	0.91701	0.91985	0.92273	0.92563	0.92856	0.93150	0.93445	0.93739	0.94033	0.94325	0.94613	0.94897
55	0.89498	0.89750	0.90009	0.90275	0.90548	0.90827	0.91112	0.91404	0.91699	0.91999	0.92301	0.92606	0.92913	0.93221	0.93529	0.93836	0.94140	0.94440
56	0.88851	0.89105	0.89366	0.89636	0.89913	0.90197	0.90488	0.90785	0.91088	0.91396	0.91708	0.92023	0.92341	0.92662	0.92983	0.93304	0.93624	0.93941
57	0.88174	0.88429	0.88693	0.88965	0.89245	0.89533	0.89829	0.90132	0.90441	0.90756	0.91077	0.91401	0.91730	0.92062	0.92396	0.92731	0.93066	0.93400
58	0.87468	0.87725	0.87990	0.88264	0.88546	0.88837	0.89137	0.89445	0.89760	0.90081	0.90409	0.90741	0.91080	0.91423	0.91769	0.92118	0.92467	0.92816
59	0.86737	0.86994	0.87260	0.87535	0.87819	0.88112	0.88415	0.88727	0.89046	0.89373	0.89707	0.90047	0.90394	0.90747	0.91104	0.91465	0.91828	0.92192
60	0.85979	0.86236	0.86501	0.86777	0.87062	0.87357	0.87662	0.87976	0.88300	0.88631	0.88970	0.89317	0.89671	0.90033	0.90400	0.90772	0.91147	0.91525
61	0.85196	0.85451	0.85717	0.85992	0.86277	0.86573	0.86879	0.87196	0.87521	0.87856	0.88200	0.88552	0.88912	0.89281	0.89657	0.90039	0.90426	0.90816
62	0.84393	0.84647	0.84911	0.85185	0.85470	0.85766	0.86072	0.86390	0.86717	0.87055	0.87401	0.87757	0.88123	0.88498	0.88881	0.89272	0.89669	0.90071
63	0.83567	0.83819	0.84081	0.84354	0.84637	0.84932	0.85238	0.85556	0.85884	0.86223	0.86572	0.86930	0.87300	0.87680	0.88069	0.88467	0.88873	0.89285
64	0.82725	0.82974	0.83233	0.83504	0.83786	0.84079	0.84384	0.84700	0.85028	0.85368	0.85718	0.86078	0.86450	0.86834	0.87228	0.87632	0.88045	0.88465
65	0.81863	0.82108	0.82365	0.82632	0.82912	0.83202	0.83505	0.83820	0.84147	0.84486	0.84836	0.85197	0.85570	0.85956	0.86354	0.86762	0.87181	0.87608
66	0.80982	0.81224	0.81477	0.81741	0.82016	0.82304	0.82604	0.82917	0.83242	0.83578	0.83927	0.84288	0.84662	0.85049	0.85448	0.85859	0.86282	0.86715
67	0.80090	0.80328	0.80576	0.80837	0.81108	0.81392	0.81689	0.81998	0.82320	0.82654	0.83001	0.83360	0.83733	0.84120	0.84520	0.84932	0.85358	0.85794
68	0.79182	0.79415	0.79659	0.79915	0.80182	0.80462	0.80754	0.81059	0.81377	0.81708	0.82051	0.82407	0.82778	0.83164	0.83563	0.83976	0.84402	0.84841
69	0.78251	0.78479	0.78718	0.78968	0.79230	0.79504	0.79792	0.80092	0.80405	0.80732	0.81071	0.81423	0.81791	0.82173	0.82570	0.82981	0.83407	0.83846
70	0.77303	0.77526	0.77759	0.78003	0.78260	0.78528	0.78810	0.79105	0.79412	0.79733	0.80067	0.80414	0.80777	0.81156	0.81549	0.81957	0.82381	0.82818
Spouse																		
Judge	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75
50	0.96529	0.96735	0.96933	0.97125	0.97308	0.97484	0.97653	0.97814	0.97967	0.98112	0.98251	0.98382	0.98506	0.98623	0.98733	0.98837	0.98934	0.99026
51	0.96245	0.96466	0.96681	0.96887	0.97086	0.97277	0.97460	0.97635	0.97802	0.97960	0.98111	0.98254	0.98389	0.98517	0.98637	0.98750	0.98856	0.98956
52	0.95927	0.96165	0.96396	0.96619	0.96835	0.97042	0.97240	0.97431	0.97612	0.97785	0.97950	0.98106	0.98254	0.98393	0.98525	0.98648	0.98764	0.98873
53	0.95571	0.95827	0.96075	0.96316	0.96548	0.96773	0.96988	0.97195	0.97393	0.97582	0.97762	0.97933	0.98095	0.98247	0.98392	0.98527	0.98655	0.98774
54	0.95176	0.95449	0.95715	0.95974	0.96225	0.96468	0.96702	0.96927	0.97143	0.97349	0.97545	0.97732	0.97910	0.98077	0.98236	0.98385	0.98525	0.98656
55	0.94737	0.95028	0.95313	0.95591	0.95861	0.96123	0.96377	0.96621	0.96856	0.97081	0.97296	0.97501	0.97695	0.97880	0.98054	0.98218	0.98373	0.98517
56	0.94255	0.94564	0.94868	0.95166	0.95456	0.95738	0.96012	0.96277	0.96532	0.96778	0.97012	0.97237	0.97450	0.97653	0.97845	0.98026	0.98196	0.98356
57	0.93730	0.94058	0.94381	0.94698	0.95009	0.95313	0.95608	0.95894	0.96171	0.96438	0.96694	0.96939	0.97173	0.97395	0.97607	0.97806	0.97994	0.98171
58	0.93164	0.93509	0.93851	0.94188	0.94520	0.94845	0.95162	0.95471	0.95770	0.96059	0.96338	0.96606	0.96862	0.97106	0.97338	0.97558	0.97766	0.97961
59	0.92556	0.92918	0.93279	0.93636	0.93988	0.94335	0.94674	0.95006	0.95329	0.95642	0.95945	0.96236	0.96516	0.96783	0.97038	0.97280	0.97509	0.97725
60	0.91904	0.92283	0.92662	0.93038	0.93411	0.93779	0.94141	0.94497	0.94844	0.95181	0.95509	0.95825	0.96130	0.96422	0.96701	0.96967	0.97219	0.97458
61	0.91209	0.91605	0.92000	0.92395	0.92788	0.93177	0.93562	0.93941	0.94312	0.94675	0.95029	0.95371	0.95702	0.96021	0.96326	0.96618	0.96895	0.97158
62	0.90477	0.90887	0.91298	0.91711	0.92123	0.92533	0.92940	0.93342	0.93738	0.94127	0.94506	0.94876	0.95235	0.95581	0.95914	0.96232	0.96537	0.96826
63	0.89703	0.90125	0.90552	0.90981	0.91411	0.91841	0.92269	0.92695	0.93115	0.93529	0.93936	0.94333	0.94720	0.95095	0.95457	0.95805	0.96138	0.96455
64	0.88893	0.89328	0.89768	0.90212	0.90659	0.91107	0.91556	0.92004	0.92448	0.92887	0.93321	0.93746	0.94162	0.94566	0.94959	0.95337	0.95700	0.96048
65	0.88045	0.88489	0.88941	0.89399	0.89861	0.90327	0.90795	0.91263	0.91731	0.92195	0.92655	0.93108	0.93553	0.93988	0.94411	0.94821	0.95216	0.95596
66	0.87158	0.87611	0.88073	0.88542	0.89018	0.89499	0.89985	0.90473	0.90962	0.91450	0.91936	0.92417	0.92891	0.93356	0.93812	0.94254	0.94683	0.95096
67	0.86242	0.86702	0.87172	0.87651	0.88139	0.88634	0.89135	0.89641	0.90151	0.90661	0.91171	0.91679	0.92182	0.92677	0.93165	0.93640	0.94104	0.94551
68	0.85292	0.85756	0.86232	0.86719	0.87217	0.87723	0.88239	0.88761	0.89289	0.89820	0.90353	0.90887	0.91417	0.91943	0.92462	0.92971	0.93469	0.93952
69	0.84298	0.84765	0.85245	0.85738	0.86243	0.86759	0.87286	0.87822	0.88366	0.88916	0.89471	0.90028	0.90585	0.91139	0.91690	0.92232	0.92765	0.93285
70	0.83270	0.83738	0.84220	0.84716	0.85226	0.85749	0.86285	0.86833	0.87390	0.87957	0.88530	0.89109	0.89691	0.90272	0.90853	0.91427	0.91996	0.92553

IDAHO ADMINISTRATIVE CODE
Public Employee Retirement System of Idaho

IDAPA 59.02.01
Rules for the Judges' Retirement Fund

APPENDIX A

Judges' Retirement Fund of the State of Idaho
50% Contingent Annuitant Factors for Spouses
Judges hired on or after July 1, 2012

Spouse		40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57
Judge																			
50	0.96636	0.96745	0.96855	0.96966	0.97078	0.97190	0.97304	0.97417	0.97529	0.97641	0.97752	0.97861	0.97968	0.98074	0.98177	0.98278	0.98375	0.98470	
51	0.96407	0.96519	0.96633	0.96748	0.96865	0.96982	0.97101	0.97219	0.97338	0.97455	0.97572	0.97688	0.97802	0.97915	0.98025	0.98133	0.98238	0.98340	
52	0.96161	0.96277	0.96394	0.96514	0.96635	0.96757	0.96880	0.97004	0.97128	0.97252	0.97376	0.97498	0.97619	0.97739	0.97857	0.97973	0.98085	0.98195	
53	0.95896	0.96015	0.96136	0.96260	0.96385	0.96512	0.96640	0.96770	0.96899	0.97030	0.97159	0.97288	0.97417	0.97544	0.97669	0.97793	0.97914	0.98032	
54	0.95612	0.95734	0.95859	0.95986	0.96115	0.96247	0.96380	0.96515	0.96650	0.96786	0.96922	0.97058	0.97194	0.97329	0.97462	0.97593	0.97723	0.97849	
55	0.95306	0.95432	0.95560	0.95691	0.95824	0.95960	0.96098	0.96238	0.96379	0.96521	0.96664	0.96806	0.96949	0.97091	0.97233	0.97372	0.97510	0.97645	
56	0.94981	0.95109	0.95240	0.95375	0.95512	0.95652	0.95795	0.95940	0.96087	0.96234	0.96383	0.96532	0.96682	0.96832	0.96981	0.97129	0.97276	0.97420	
57	0.94635	0.94766	0.94901	0.95038	0.95180	0.95324	0.95471	0.95621	0.95772	0.95926	0.96081	0.96237	0.96394	0.96551	0.96708	0.96865	0.97020	0.97173	
58	0.94269	0.94403	0.94540	0.94681	0.94826	0.94974	0.95125	0.95280	0.95437	0.95596	0.95757	0.95919	0.96083	0.96247	0.96412	0.96577	0.96741	0.96904	
59	0.93884	0.94020	0.94160	0.94304	0.94452	0.94603	0.94759	0.94918	0.95080	0.95244	0.95411	0.95579	0.95749	0.95921	0.96094	0.96267	0.96440	0.96612	
60	0.93477	0.93615	0.93758	0.93905	0.94056	0.94211	0.94370	0.94533	0.94700	0.94869	0.95041	0.95216	0.95393	0.95572	0.95752	0.95933	0.96115	0.96296	
61	0.93049	0.93190	0.93335	0.93484	0.93638	0.93796	0.93959	0.94126	0.94297	0.94471	0.94649	0.94829	0.95012	0.95198	0.95386	0.95575	0.95765	0.95955	
62	0.92603	0.92745	0.92892	0.93043	0.93200	0.93361	0.93527	0.93698	0.93873	0.94052	0.94234	0.94420	0.94609	0.94801	0.94996	0.95193	0.95391	0.95590	
63	0.92134	0.92278	0.92427	0.92581	0.92739	0.92903	0.93073	0.93247	0.93425	0.93608	0.93795	0.93986	0.94181	0.94380	0.94581	0.94786	0.94992	0.95200	
64	0.91647	0.91792	0.91942	0.92098	0.92259	0.92426	0.92597	0.92775	0.92957	0.93144	0.93335	0.93530	0.93731	0.93935	0.94143	0.94355	0.94569	0.94785	
65	0.91138	0.91284	0.91436	0.91593	0.91756	0.91924	0.92099	0.92279	0.92464	0.92655	0.92850	0.93050	0.93255	0.93465	0.93679	0.93897	0.94118	0.94342	
66	0.90606	0.90753	0.90906	0.91065	0.91229	0.91400	0.91576	0.91759	0.91947	0.92141	0.92340	0.92543	0.92753	0.92968	0.93188	0.93412	0.93640	0.93872	
67	0.90056	0.90204	0.90358	0.90517	0.90683	0.90855	0.91034	0.91218	0.91409	0.91606	0.91808	0.92015	0.92229	0.92449	0.92674	0.92904	0.93138	0.93377	
68	0.89484	0.89632	0.89786	0.89947	0.90114	0.90287	0.90467	0.90653	0.90846	0.91045	0.91250	0.91461	0.91678	0.91902	0.92132	0.92367	0.92608	0.92853	
69	0.88882	0.89031	0.89185	0.89346	0.89514	0.89688	0.89869	0.90057	0.90252	0.90453	0.90660	0.90874	0.91095	0.91322	0.91556	0.91796	0.92042	0.92293	
70	0.88256	0.88404	0.88559	0.88720	0.88888	0.89063	0.89245	0.89434	0.89630	0.89833	0.90042	0.90258	0.90481	0.90712	0.90950	0.91194	0.91445	0.91701	
Spouse		58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75
Judge																			
50	0.98562	0.98650	0.98735	0.98816	0.98894	0.98968	0.99039	0.99106	0.99170	0.99230	0.99288	0.99342	0.99393	0.99441	0.99487	0.99529	0.99569	0.99606	
51	0.98439	0.98535	0.98627	0.98715	0.98799	0.98880	0.98958	0.99031	0.99101	0.99167	0.99230	0.99289	0.99345	0.99398	0.99447	0.99494	0.99537	0.99578	
52	0.98302	0.98405	0.98505	0.98600	0.98692	0.98781	0.98865	0.98945	0.99022	0.99094	0.99163	0.99228	0.99289	0.99347	0.99401	0.99452	0.99500	0.99544	
53	0.98146	0.98258	0.98366	0.98470	0.98570	0.98666	0.98758	0.98846	0.98929	0.99009	0.99084	0.99156	0.99223	0.99286	0.99346	0.99402	0.99455	0.99503	
54	0.97972	0.98093	0.98209	0.98322	0.98431	0.98535	0.98636	0.98732	0.98823	0.98911	0.98993	0.99072	0.99146	0.99216	0.99282	0.99343	0.99401	0.99455	
55	0.97778	0.97907	0.98033	0.98155	0.98273	0.98387	0.98496	0.98601	0.98702	0.98797	0.98888	0.98975	0.99056	0.99133	0.99206	0.99274	0.99338	0.99398	
56	0.97562	0.97701	0.97836	0.97968	0.98096	0.98220	0.98339	0.98453	0.98563	0.98668	0.98768	0.98863	0.98953	0.99039	0.99119	0.99194	0.99265	0.99331	
57	0.97324	0.97473	0.97619	0.97761	0.97899	0.98033	0.98162	0.98287	0.98407	0.98522	0.98632	0.98737	0.98836	0.98930	0.99019	0.99103	0.99181	0.99255	
58	0.97065	0.97223	0.97379	0.97532	0.97681	0.97826	0.97966	0.98102	0.98233	0.98359	0.98480	0.98595	0.98704	0.98808	0.98906	0.98999	0.99086	0.99167	
59	0.96783	0.96951	0.97118	0.97281	0.97441	0.97598	0.97750	0.97897	0.98040	0.98177	0.98309	0.98436	0.98556	0.98670	0.98779	0.98881	0.98978	0.99069	
60	0.96476	0.96655	0.96832	0.97007	0.97179	0.97347	0.97511	0.97670	0.97825	0.97975	0.98119	0.98257	0.98390	0.98516	0.98636	0.98749	0.98856	0.98957	
61	0.96145	0.96334	0.96522	0.96708	0.96891	0.97071	0.97248	0.97420	0.97588	0.97750	0.97907	0.98059	0.98204	0.98342	0.98474	0.98600	0.98718	0.98830	
62	0.95790	0.95989	0.96188	0.96385	0.96580	0.96772	0.96961	0.97147	0.97328	0.97504	0.97675	0.97840	0.97998	0.98150	0.98296	0.98434	0.98565	0.98689	
63	0.95408	0.95617	0.95826	0.96035	0.96242	0.96447	0.96649	0.96848	0.97042	0.97233	0.97418	0.97597	0.97770	0.97937	0.98096	0.98248	0.98393	0.98530	
64	0.95002	0.95221	0.95441	0.95660	0.95879	0.96096	0.96311	0.96523	0.96732	0.96937	0.97137	0.97332	0.97520	0.97702	0.97876	0.98043	0.98203	0.98354	
65	0.94569	0.94797	0.95026	0.95257	0.95487	0.95716	0.95945	0.96171	0.96394	0.96614	0.96829	0.97039	0.97243	0.97441	0.97632	0.97815	0.97990	0.98157	
66	0.94106	0.94344	0.94583	0.94824	0.95065	0.95307	0.95548	0.95788	0.96026	0.96260	0.96491	0.96718	0.96939	0.97153	0.97361	0.97561	0.97754	0.97937	
67	0.93619	0.93865	0.94113	0.94364	0.94617	0.94870	0.95124	0.95378	0.95630	0.95880	0.96127	0.96370	0.96608	0.96840	0.97065	0.97283	0.97494	0.97695	
68	0.93102	0.93356	0.93614	0.93874	0.94137	0.94402	0.94668	0.94935	0.95202	0.95467	0.95729	0.95989	0.96245	0.96495	0.96739	0.96976	0.97205	0.97425	
69	0.92550	0.92811	0.93077	0.93346	0.93619	0.93895	0.94174	0.94453	0.94734	0.95014	0.95293	0.95569	0.95842	0.96111	0.96375	0.96631	0.96880	0.97121	
70	0.91964	0.92232	0.92505	0.92783	0.93066	0.93352	0.93642	0.93934	0.94228	0.94523	0.94818	0.95111	0.95402	0.95690	0.95973	0.96249	0.96520	0.96781	

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Rules for the Judges' Retirement Fund

or after July 1, 2012

a	Spouse													
	40	41	42	43	44	45	46	47	48	49	50	51	52	53
50	0.89139	0.89464	0.89794	0.90129	0.90469	0.90812	0.91158	0.91507	0.91855	0.92203	0.92549	0.92892	0.93232	0.93568
51	0.88461	0.88792	0.89131	0.89475	0.89825	0.90179	0.90538	0.90900	0.91263	0.91627	0.91989	0.92350	0.92709	0.93064
52	0.87740	0.88078	0.88424	0.88776	0.89135	0.89501	0.89871	0.90245	0.90623	0.91001	0.91380	0.91758	0.92135	0.92510
53	0.86973	0.87316	0.87668	0.88028	0.88396	0.88771	0.89152	0.89538	0.89929	0.90322	0.90717	0.91112	0.91507	0.91901
54	0.86159	0.86507	0.86865	0.87232	0.87607	0.87991	0.88382	0.88779	0.89182	0.89589	0.89998	0.90409	0.90822	0.91235
55	0.85297	0.85650	0.86012	0.86385	0.86767	0.87158	0.87557	0.87965	0.88379	0.88798	0.89222	0.89648	0.90078	0.90510
56	0.84391	0.84747	0.85113	0.85490	0.85878	0.86275	0.86683	0.87099	0.87524	0.87955	0.88391	0.88832	0.89277	0.89726
57	0.83443	0.83801	0.84170	0.84551	0.84943	0.85346	0.85760	0.86185	0.86618	0.87059	0.87507	0.87961	0.88421	0.88886
58	0.82456	0.82815	0.83186	0.83569	0.83965	0.84372	0.84792	0.85223	0.85664	0.86114	0.86572	0.87038	0.87512	0.87992
59	0.81432	0.81791	0.82164	0.82549	0.82947	0.83357	0.83781	0.84217	0.84665	0.85123	0.85590	0.86066	0.86552	0.87046
60	0.80371	0.80730	0.81102	0.81488	0.81887	0.82300	0.82727	0.83167	0.83619	0.84084	0.84559	0.85044	0.85540	0.86046
61	0.79275	0.79632	0.80003	0.80389	0.80788	0.81202	0.81631	0.82074	0.82530	0.82999	0.83480	0.83972	0.84477	0.84994
62	0.78150	0.78506	0.78875	0.79259	0.79658	0.80072	0.80501	0.80946	0.81404	0.81876	0.82362	0.82860	0.83372	0.83897
63	0.76994	0.77346	0.77713	0.78095	0.78492	0.78905	0.79333	0.79778	0.80237	0.80712	0.81200	0.81702	0.82220	0.82752
64	0.75815	0.76163	0.76527	0.76905	0.77300	0.77710	0.78137	0.78581	0.79040	0.79515	0.80005	0.80509	0.81030	0.81568
65	0.74608	0.74952	0.75311	0.75685	0.76076	0.76483	0.76907	0.77349	0.77806	0.78280	0.78770	0.79275	0.79799	0.80339
66	0.73374	0.73713	0.74067	0.74437	0.74823	0.75226	0.75646	0.76084	0.76538	0.77010	0.77498	0.78003	0.78526	0.79068
67	0.72126	0.72459	0.72807	0.73171	0.73552	0.73949	0.74365	0.74798	0.75248	0.75716	0.76201	0.76704	0.77226	0.77767
68	0.70855	0.71181	0.71523	0.71881	0.72255	0.72646	0.73056	0.73483	0.73928	0.74391	0.74872	0.75370	0.75890	0.76429
69	0.69551	0.69870	0.70205	0.70555	0.70922	0.71306	0.71708	0.72129	0.72568	0.73024	0.73499	0.73992	0.74507	0.75042
70	0.68225	0.68536	0.68862	0.69205	0.69564	0.69940	0.70334	0.70747	0.71177	0.71627	0.72094	0.72580	0.73088	0.73618

a	Spouse													
	58	59	60	61	62	63	64	65	66	67	68	69	70	71
50	0.95140	0.95429	0.95707	0.95974	0.96232	0.96478	0.96714	0.96939	0.97153	0.97357	0.97551	0.97735	0.97908	0.98072
51	0.94743	0.95053	0.95353	0.95642	0.95921	0.96188	0.96444	0.96689	0.96922	0.97144	0.97356	0.97556	0.97745	0.97924
52	0.94298	0.94631	0.94955	0.95267	0.95568	0.95858	0.96137	0.96403	0.96657	0.96899	0.97130	0.97348	0.97555	0.97750
53	0.93800	0.94157	0.94505	0.94842	0.95168	0.95482	0.95784	0.96073	0.96351	0.96615	0.96867	0.97106	0.97332	0.97546
54	0.93246	0.93628	0.94001	0.94363	0.94715	0.95055	0.95383	0.95698	0.96000	0.96288	0.96563	0.96825	0.97074	0.97308
55	0.92631	0.93039	0.93438	0.93827	0.94205	0.94573	0.94927	0.95269	0.95598	0.95913	0.96214	0.96501	0.96773	0.97031
56	0.91957	0.92390	0.92815	0.93232	0.93638	0.94034	0.94417	0.94788	0.95145	0.95489	0.95817	0.96131	0.96430	0.96714
57	0.91223	0.91681	0.92133	0.92578	0.93013	0.93438	0.93851	0.94252	0.94640	0.95013	0.95371	0.95715	0.96042	0.96354
58	0.90429	0.90913	0.91391	0.91864	0.92328	0.92783	0.93227	0.93659	0.94078	0.94483	0.94874	0.95248	0.95607	0.95948
59	0.89578	0.90086	0.90590	0.91090	0.91584	0.92069	0.92544	0.93009	0.93461	0.93899	0.94323	0.94731	0.95122	0.95496
60	0.88665	0.89197	0.89727	0.90254	0.90775	0.91291	0.91798	0.92295	0.92781	0.93254	0.93712	0.94155	0.94582	0.94991
61	0.87693	0.88246	0.88800	0.89353	0.89903	0.90448	0.90987	0.91517	0.92037	0.92545	0.93040	0.93520	0.93983	0.94429
62	0.86668	0.87241	0.87818	0.88395	0.88972	0.89546	0.90116	0.90679	0.91233	0.91777	0.92309	0.92827	0.93329	0.93813
63	0.85584	0.86176	0.86773	0.87373	0.87976	0.88578	0.89177	0.89772	0.90361	0.90941	0.91510	0.92067	0.92608	0.93133

IDAHO ADMINISTRATIVE CODE
Public Employee Retirement System of Idaho

IDAPA 59.02.01
Rules for the Judges' Retirement Fund

APPENDIX A

Judges' Retirement Fund of the State of Idaho
50% Contingent Annuitant Factors for Non-Spouses
For all Judges, irrespective of hire date

Non-Spouse		40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57
Judge																			
	50	0.91590	0.91862	0.92136	0.92414	0.92694	0.92976	0.93259	0.93541	0.93823	0.94102	0.94379	0.94651	0.94920	0.95184	0.95442	0.95694	0.95939	0.96175
	51	0.91017	0.91298	0.91583	0.91871	0.92162	0.92456	0.92752	0.93048	0.93344	0.93638	0.93931	0.94220	0.94506	0.94787	0.95063	0.95333	0.95596	0.95851
	52	0.90402	0.90692	0.90986	0.91284	0.91587	0.91892	0.92201	0.92511	0.92821	0.93131	0.93439	0.93745	0.94048	0.94348	0.94642	0.94931	0.95213	0.95488
	53	0.89740	0.90038	0.90341	0.90649	0.90962	0.91280	0.91601	0.91924	0.92249	0.92574	0.92898	0.93221	0.93542	0.93860	0.94174	0.94482	0.94784	0.95079
	54	0.89029	0.89335	0.89647	0.89965	0.90288	0.90617	0.90950	0.91287	0.91626	0.91966	0.92306	0.92646	0.92985	0.93321	0.93655	0.93983	0.94306	0.94623
	55	0.88266	0.88579	0.88900	0.89227	0.89561	0.89900	0.90246	0.90595	0.90948	0.91303	0.91659	0.92016	0.92373	0.92728	0.93081	0.93431	0.93775	0.94113
	56	0.87452	0.87773	0.88101	0.88437	0.88781	0.89131	0.89488	0.89850	0.90216	0.90586	0.90958	0.91331	0.91706	0.92080	0.92453	0.92824	0.93190	0.93550
	57	0.86588	0.86915	0.87251	0.87596	0.87949	0.88309	0.88677	0.89051	0.89431	0.89815	0.90202	0.90592	0.90984	0.91377	0.91770	0.92161	0.92550	0.92933
	58	0.85673	0.86007	0.86350	0.86703	0.87065	0.87435	0.87813	0.88199	0.88592	0.88989	0.89391	0.89797	0.90206	0.90618	0.91031	0.91443	0.91853	0.92260
	59	0.84709	0.85049	0.85399	0.85760	0.86129	0.86509	0.86897	0.87294	0.87699	0.88110	0.88526	0.88947	0.89374	0.89804	0.90236	0.90669	0.91101	0.91530
	60	0.83693	0.84038	0.84395	0.84762	0.85140	0.85527	0.85926	0.86333	0.86749	0.87173	0.87603	0.88039	0.88482	0.88929	0.89380	0.89834	0.90287	0.90740
	61	0.82624	0.82974	0.83337	0.83710	0.84095	0.84491	0.84898	0.85315	0.85742	0.86178	0.86621	0.87071	0.87530	0.87994	0.88464	0.88937	0.89412	0.89887
	62	0.81507	0.81862	0.82229	0.82609	0.83000	0.83403	0.83819	0.84245	0.84683	0.85130	0.85585	0.86049	0.86522	0.87003	0.87490	0.87983	0.88478	0.88976
	63	0.80336	0.80695	0.81067	0.81451	0.81849	0.82259	0.82682	0.83117	0.83564	0.84021	0.84489	0.84965	0.85452	0.85949	0.86453	0.86964	0.87480	0.87999
	64	0.79117	0.79480	0.79856	0.80245	0.80648	0.81064	0.81494	0.81937	0.82392	0.82860	0.83338	0.83826	0.84327	0.84838	0.85358	0.85886	0.86421	0.86961
	65	0.77844	0.78210	0.78589	0.78982	0.79390	0.79811	0.80247	0.80697	0.81161	0.81637	0.82125	0.82624	0.83137	0.83662	0.84198	0.84743	0.85296	0.85856
	66	0.76515	0.76883	0.77265	0.77662	0.78073	0.78499	0.78941	0.79397	0.79868	0.80352	0.80849	0.81358	0.81883	0.82420	0.82970	0.83530	0.84101	0.84680
	67	0.75140	0.75510	0.75894	0.76294	0.76708	0.77138	0.77584	0.78046	0.78523	0.79014	0.79519	0.80038	0.80572	0.81122	0.81684	0.82259	0.82846	0.83442
	68	0.73709	0.74080	0.74465	0.74867	0.75284	0.75717	0.76167	0.76634	0.77116	0.77613	0.78125	0.78652	0.79196	0.79755	0.80330	0.80918	0.81519	0.82132
	69	0.72206	0.72577	0.72964	0.73366	0.73785	0.74221	0.74674	0.75144	0.75630	0.76133	0.76651	0.77184	0.77736	0.78305	0.78890	0.79491	0.80105	0.80733
	70	0.70640	0.71011	0.71397	0.71800	0.72220	0.72657	0.73112	0.73585	0.74075	0.74582	0.75105	0.75644	0.76203	0.76780	0.77374	0.77985	0.78612	0.79253
Non-Spouse		58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75
Judge																			
	50	0.96404	0.96624	0.96836	0.97039	0.97234	0.97419	0.97596	0.97765	0.97925	0.98076	0.98220	0.98355	0.98483	0.98604	0.98717	0.98823	0.98923	0.99016
	51	0.96098	0.96337	0.96567	0.96787	0.96999	0.97201	0.97394	0.97578	0.97752	0.97918	0.98075	0.98223	0.98363	0.98494	0.98618	0.98734	0.98843	0.98945
	52	0.95754	0.96012	0.96261	0.96501	0.96731	0.96951	0.97162	0.97363	0.97554	0.97735	0.97907	0.98069	0.98223	0.98367	0.98503	0.98630	0.98749	0.98860
	53	0.95366	0.95645	0.95914	0.96175	0.96425	0.96665	0.96895	0.97114	0.97323	0.97522	0.97711	0.97889	0.98058	0.98216	0.98365	0.98505	0.98636	0.98758
	54	0.94931	0.95232	0.95523	0.95805	0.96077	0.96338	0.96589	0.96829	0.97058	0.97276	0.97484	0.97680	0.97865	0.98040	0.98204	0.98359	0.98503	0.98638
	55	0.94444	0.94767	0.95082	0.95387	0.95682	0.95967	0.96241	0.96503	0.96754	0.96993	0.97221	0.97437	0.97641	0.97834	0.98015	0.98186	0.98346	0.98495
	56	0.93905	0.94252	0.94590	0.94920	0.95240	0.95549	0.95847	0.96133	0.96408	0.96670	0.96920	0.97158	0.97383	0.97596	0.97797	0.97986	0.98163	0.98329
	57	0.93311	0.93683	0.94046	0.94402	0.94747	0.95082	0.95406	0.95719	0.96019	0.96306	0.96581	0.96842	0.97091	0.97326	0.97548	0.97757	0.97953	0.98137
	58	0.92662	0.93058	0.93448	0.93830	0.94202	0.94565	0.94916	0.95256	0.95583	0.95898	0.96199	0.96487	0.96760	0.97020	0.97265	0.97497	0.97715	0.97919
	59	0.91957	0.92379	0.92795	0.93203	0.93604	0.93994	0.94375	0.94744	0.95100	0.95444	0.95773	0.96089	0.96390	0.96676	0.96948	0.97204	0.97445	0.97672
	60	0.91191	0.91638	0.92081	0.92517	0.92946	0.93366	0.93777	0.94176	0.94563	0.94937	0.95298	0.95643	0.95974	0.96289	0.96589	0.96872	0.97140	0.97391
	61	0.90362	0.90835	0.91305	0.91769	0.92227	0.92678	0.93119	0.93550	0.93969	0.94376	0.94769	0.95147	0.95509	0.95856	0.96186	0.96499	0.96796	0.97075
	62	0.89475	0.89973	0.90469	0.90962	0.91449	0.91930	0.92404	0.92867	0.93320	0.93760	0.94187	0.94600	0.94996	0.95376	0.95740	0.96085	0.96413	0.96722
	63	0.88520	0.89044	0.89566	0.90087	0.90604	0.91116	0.91622	0.92119	0.92606	0.93082	0.93544	0.93993	0.94426	0.94842	0.95241	0.95621	0.95983	0.96325
	64	0.87505	0.88053	0.88601	0.89150	0.89696	0.90239	0.90777	0.91309	0.91831	0.92343	0.92843	0.93329	0.93800	0.94254	0.94691	0.95108	0.95507	0.95885
	65	0.86421	0.86992	0.87566	0.88141	0.88717	0.89291	0.89861	0.90427	0.90985	0.91534	0.92072	0.92598	0.93109	0.93603	0.94080	0.94538	0.94976	0.95393
	66	0.85266	0.85859	0.86457	0.87059	0.87663	0.88267	0.88870	0.89470	0.90064	0.90651	0.91229	0.91795	0.92347	0.92883	0.93403	0.93903	0.94384	0.94843
	67	0.84048	0.84662	0.85284	0.85911	0.86542	0.87176	0.87811	0.88444	0.89075	0.89699	0.90317	0.90924	0.91519	0.92099	0.92664	0.93208	0.93734	0.94237
	68	0.82756	0.83390	0.84034	0.84685	0.85343	0.86005	0.86671	0.87338	0.88004	0.88666	0.89324	0.89973	0.90611	0.91236	0.91847	0.92439	0.93012	0.93563
	69	0.81374	0.82027	0.82691	0.83365	0.84048	0.84738	0.85434	0.86133	0.86834	0.87534	0.88231	0.88923	0.89606	0.90277	0.90936	0.91577	0.92201	0.92802
	70	0.79909	0.80580	0.81263	0.81959	0.82665	0.83381	0.84105	0.84836	0.85571	0.86308	0.87044	0.87778	0.88506	0.89224	0.89932	0.90624	0.91299	0.91954

IDAHO ADMINISTRATIVE CODE
Public Employee Retirement System of Idaho

IDAPA 59.02.01
Rules for the Judges' Retirement Fund

APPENDIX A

Judges' Retirement Fund of the State of Idaho
100% Contingent Annuitant Factors for Non-Spouses
For all Judges, irrespective of hire date

Judge	Non-Spouse																
	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56
50	0.84485	0.84948	0.85420	0.85898	0.86384	0.86874	0.87369	0.87867	0.88365	0.88862	0.89356	0.89846	0.90332	0.90811	0.91282	0.91744	0.92194
51	NA	0.83989	0.84472	0.84964	0.85464	0.85970	0.86483	0.86999	0.87518	0.88038	0.88556	0.89071	0.89584	0.90091	0.90591	0.91083	0.91564
52	NA	NA	0.83462	0.83966	0.84479	0.85001	0.85530	0.86065	0.86604	0.87145	0.87686	0.88226	0.88765	0.89300	0.89830	0.90352	0.90864
53	NA	NA	NA	0.82898	0.83423	0.83958	0.84503	0.85055	0.85613	0.86174	0.86738	0.87302	0.87867	0.88430	0.88989	0.89541	0.90086
54	NA	NA	NA	NA	0.82296	0.82844	0.83402	0.83970	0.84545	0.85127	0.85712	0.86299	0.86889	0.87479	0.88067	0.88650	0.89226
55	NA	NA	NA	NA	NA	0.81654	0.82225	0.82807	0.83399	0.83998	0.84603	0.85212	0.85826	0.86442	0.87058	0.87671	0.88280
56	NA	NA	NA	NA	NA	NA	0.80976	0.81570	0.82177	0.82792	0.83416	0.84045	0.84682	0.85323	0.85966	0.86608	0.87248
57	NA	NA	NA	NA	NA	NA	NA	0.80264	0.80883	0.81513	0.82153	0.82801	0.83459	0.84124	0.84792	0.85463	0.86132
58	NA	NA	NA	NA	NA	NA	NA	NA	0.79520	0.80163	0.80818	0.81483	0.82160	0.82846	0.83538	0.84235	0.84934
59	NA	NA	NA	NA	NA	NA	NA	NA	NA	0.78747	0.79415	0.80095	0.80789	0.81494	0.82209	0.82930	0.83656
60	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0.77941	0.78634	0.79343	0.80065	0.80800	0.81543	0.82294
61	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0.77103	0.77825	0.78562	0.79314	0.80078	0.80851
62	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0.76246	0.76996	0.77763	0.78544	0.79338
63	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0.75360	0.76139	0.76934	0.77746
64	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0.74456	0.75264	0.76089
65	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0.73525	0.74361
66	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0.73254
67	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0.71588
68	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
69	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
70	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

Judge	Non-Spouse																
	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74
50	0.93058	0.93469	0.93867	0.94249	0.94617	0.94969	0.95306	0.95627	0.95933	0.96225	0.96501	0.96764	0.97012	0.97246	0.97466	0.97674	0.97869
51	0.92489	0.92932	0.93361	0.93774	0.94172	0.94554	0.94920	0.95270	0.95603	0.95921	0.96222	0.96508	0.96778	0.97034	0.97274	0.97500	0.97713
52	0.91855	0.92331	0.92792	0.93239	0.93669	0.94083	0.94481	0.94861	0.95224	0.95571	0.95900	0.96212	0.96507	0.96786	0.97050	0.97297	0.97529
53	0.91143	0.91653	0.92150	0.92631	0.93096	0.93545	0.93977	0.94391	0.94786	0.95164	0.95524	0.95866	0.96189	0.96495	0.96783	0.97054	0.97309
54	0.90351	0.90897	0.91430	0.91948	0.92450	0.92936	0.93404	0.93854	0.94285	0.94697	0.95091	0.95465	0.95819	0.96155	0.96472	0.96770	0.97050
55	0.89473	0.90055	0.90625	0.91181	0.91722	0.92246	0.92753	0.93242	0.93712	0.94162	0.94592	0.95001	0.95390	0.95759	0.96108	0.96436	0.96745
56	0.88510	0.89128	0.89736	0.90331	0.90912	0.91477	0.92025	0.92555	0.93065	0.93555	0.94025	0.94473	0.94900	0.95305	0.95689	0.96051	0.96392
57	0.87461	0.88116	0.88762	0.89397	0.90018	0.90625	0.91216	0.91789	0.92342	0.92875	0.93388	0.93878	0.94346	0.94791	0.95213	0.95612	0.95989
58	0.86327	0.87018	0.87702	0.88377	0.89040	0.89689	0.90324	0.90941	0.91540	0.92119	0.92676	0.93212	0.93724	0.94212	0.94676	0.95116	0.95531
59	0.85111	0.85837	0.86558	0.87272	0.87976	0.88669	0.89349	0.90012	0.90658	0.91284	0.91889	0.92472	0.93031	0.93566	0.94076	0.94559	0.95018
60	0.83808	0.84567	0.85324	0.86076	0.86822	0.87558	0.88283	0.88993	0.89687	0.90362	0.91018	0.91651	0.92260	0.92844	0.93403	0.93934	0.94439
61	0.82419	0.83209	0.84001	0.84790	0.85576	0.86355	0.87124	0.87882	0.88625	0.89351	0.90057	0.90743	0.91405	0.92041	0.92653	0.93235	0.93790
62	0.80954	0.81773	0.82597	0.83422	0.84246	0.85066	0.85880	0.86684	0.87476	0.88253	0.89013	0.89752	0.90469	0.91161	0.91828	0.92465	0.93074
63	0.79405	0.80251	0.81104	0.81962	0.82822	0.83682	0.84539	0.85389	0.86230	0.87059	0.87872	0.88667	0.89440	0.90189	0.90914	0.91609	0.92276
64	0.77786	0.78655	0.79535	0.80424	0.81318	0.82215	0.83112	0.84007	0.84896	0.85775	0.86642	0.87492	0.88324	0.89132	0.89917	0.90673	0.91401
65	0.76089	0.76978	0.77882	0.78797	0.79722	0.80654	0.81589	0.82526	0.83461	0.84390	0.85309	0.86216	0.87106	0.87975	0.88822	0.89641	0.90433
66	0.74316	0.75222	0.76145	0.77084	0.78036	0.78999	0.79970	0.80946	0.81924	0.82901	0.83872	0.84834	0.85782	0.86712	0.87623	0.88507	0.89366
67	0.72485	0.73404	0.74343	0.75302	0.76277	0.77267	0.78270	0.79283	0.80301	0.81323	0.82343	0.83358	0.84364	0.85355	0.86330	0.87281	0.88207
68	0.70584	0.71512	0.72464	0.73438	0.74433	0.75447	0.76477	0.77522	0.78577	0.79640	0.80707	0.81773	0.82834	0.83885	0.84924	0.85941	0.86938
69	NA	0.69530	0.70490	0.71476	0.72486	0.73518	0.74572	0.75644	0.76732	0.77832	0.78941	0.80055	0.81169	0.82278	0.83379	0.84463	0.85530
70	NA	NA	0.68440	0.69432	0.70452	0.71499	0.72571	0.73665	0.74781	0.75913	0.77061	0.78218	0.79382	0.80545	0.81706	0.82855	0.83991