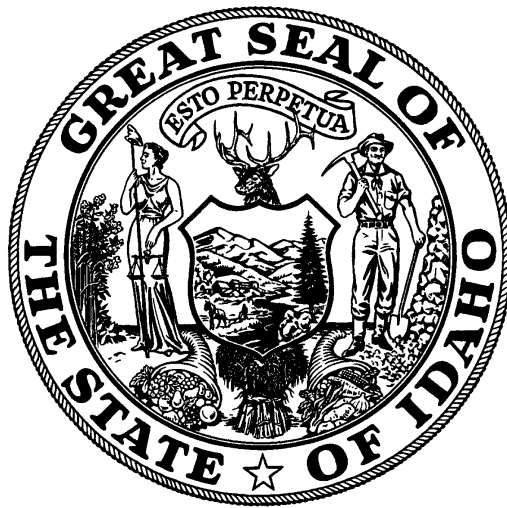


PENDING RULES COMMITTEE RULES REVIEW BOOK

**Submitted for Review Before
Senate Commerce &
Human Resources Committee
67th Idaho Legislature
First Regular Session – 2023**



Prepared by:

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

January 2023

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

ADMINISTRATIVE RULES REVIEW

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**15.04.01 – RULES OF THE DIVISION OF HUMAN RESOURCES
AND IDAHO PERSONNEL COMMISSION**

DOCKET NO. 15-0401-2201

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 2023 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 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.

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 October 5, 2022, Idaho Administrative Bulletin, [Vol. 22-10, pages 300-314](#).

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's General fund or any dedicated fund or federal fund because the changes are only verbiage in nature.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michelle Peugh, HR Policy and Program Officer, at michelle.peugh@dhr.idaho.gov or (208) 854-3073.

DATED this 25th day of November 2022.

Lori A. Wolff
Administrator
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Boise, Idaho 83720-0066
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Phone: (208) 334-2263
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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 67-5309, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2022.

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 agency considered its continued efforts to clarify and streamline rules to align with the Red Tape Reduction Act and HR Modernization. Minor housekeeping edits were included with the intent to make the rules consistent with recent statutory changes, simplify existing language, and reduce or eliminate unnecessary restrictions which have been addressed in statute.

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

FISCAL IMPACT: This rulemaking is not anticipated to have any fiscal impact on the state's General fund or any dedicated fund or federal fund because the changes are only verbiage in nature.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted due to the timing and window of opportunity for rulemaking for edits of language.

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 proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Michelle Peugh at michelle.peugh@dhr.idaho.gov or (208) 854-3073.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2022.

DATED this 20th day of September, 2022.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 15-0401-2201

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. (3-31-22)

01. Administrative Leave. Temporary paid leave from a job assignment where pay and benefits

remain intact. (3-31-22)

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. (3-31-22)

03. Appellant. An employee, appointing authority, or applicant filing an appeal or a petition for review with the Commission. (3-31-22)

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. (3-31-22)

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. (3-31-22)

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. (3-31-22)

~~**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) (3-31-22)~~

~~**07. Base Pay.** The rate paid for performing a job, excluding bonuses, shift differentials, overtime or other compensation premiums. (3-31-22)~~

~~**08. 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. (3-31-22)~~

~~**09. 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. (3-31-22)~~

~~**10. Compensation Schedule.** The pay grades established by the Division and associated rates of pay. (Ref. Section 67-5309B, Idaho Code) (3-31-22)~~

~~**11. Consultant.** An independent contractor who provides professional or technical advice, counsel, or service. (Ref. Rule 050) (3-31-22)~~

~~**12. Dismissal.** The separation of an employee from classified service with cause assigned by the appointing authority pursuant to Rule 190. (3-31-22)~~

~~**13. Division.** The Idaho Division of Human Resources. (3-31-22)~~

~~**14. 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) (3-31-22)~~

~~**15. 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. (3-31-22)~~

~~**16. Good Cause.** The conduct of a reasonable person in the same or similar circumstances. (3-31-22)~~

- 187. Hay Method.** A methodology for establishing the relative value of jobs and used as a dimension of the pay system. (3-31-22)
- 198. 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). (3-31-22)
- ~~2019.~~ **Incumbent.** Any person holding a classified or non-classified position in state service. (3-31-22)
- ~~240.~~ **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) (3-31-22)
- ~~221.~~ **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. (3-31-22)
- ~~232.~~ **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. (3-31-22)
- ~~243.~~ **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. (3-31-22)
- ~~254.~~ **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. (3-31-22)
- ~~265.~~ **Merit Increase Matrix.** A pay distribution tool used to advance employee pay based on performance and market data. (3-31-22)
- ~~276.~~ **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. (3-31-22)
- ~~287.~~ **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. (3-31-22)
- ~~298.~~ **On-Call Time.** Time when an employee is required to ~~carry a pager, cellular phone, or to leave word 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~~ **be available if called upon by their agency during hours that are outside of their normally defined work schedule.** (3-31-22)()
- ~~3029.~~ **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. (3-31-22)
- ~~340.~~ **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. (3-31-22)
- ~~321.~~ **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. (3-31-22)
- ~~332.~~ **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. (3-31-22)
- ~~343.~~ **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.~~ (3-31-22)()

- ~~354.~~ **Resignation.** The voluntary quitting or abandonment of state employment, excluding retirement. (3-31-22)
- ~~365.~~ **Respondent.** The party whose interests are adverse to those of the appellant. (3-31-22)
- ~~376.~~ **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. (3-31-22)
- ~~387.~~ **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. (3-31-22)
- ~~398.~~ **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. (3-31-22)
- ~~4039.~~ **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. (3-31-22)
- ~~470.~~ **Underfill.** Administrator-approved appointment to a position established at a higher classification while being compensated at a lower pay grade during completion of a training plan. (3-31-22)
- ~~421.~~ **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. (3-31-22)
- ~~432.~~ **Workweek.** A period of seven (7) consecutive days beginning 12:01 a.m. Sunday. (Ref. Rule 073) (3-31-22)

(BREAK IN CONTINUITY OF SECTIONS)

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. (3-31-22)
- 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. (3-31-22)
- 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. (3-31-22)
- 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. (3-31-22)
- 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. (3-31-22)

06. Salary Upon Transfer. (3-31-22)

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. (3-31-22)

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. (3-31-22)

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. ~~(3-31-22)~~ ()

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. (3-31-22)

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. (3-31-22)

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: (3-31-22)

- a.** Holiday pay; (3-31-22)
- b.** All hours worked on a holiday as overtime; (3-31-22)
- c.** All hours worked over forty (40) in the workweek as overtime, excluding occasional or sporadic work; (3-31-22)
- d.** Vacation, sick and other paid or unpaid leaves; and (3-31-22)
- e.** All remaining hours worked at the employee's regular rate of pay. (3-31-22)

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. (3-31-22)

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. (3-31-22)

04. Holiday Pay Calculation. (3-31-22)

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. (3-31-22)

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. (3-31-22)

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. (3-31-22)

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. (3-31-22)

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). (3-31-22)

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. (3-31-22)

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. (3-31-22)

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) (3-31-22)

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. ~~(3-31-22)~~ ()

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. (3-31-22)

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. (3-31-22)

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. (3-31-22)

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:~~ (3-31-22)

~~**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.~~ (3-31-22)

~~**05. Approval.** After consultation with the by review and assignment of the administrator and with~~

~~notification to 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.

~~(3-31-22)~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

084. ANNOUNCEMENT OF RECRUITMENT.

01. Distribution of Announcements. The announcement of each open-competitive recruitment will be made through an internet application system and posted 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) ~~(3-31-22)~~ ()

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. (3-31-22)

(BREAK IN CONTINUITY OF SECTIONS)

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. (3-31-22)

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. (3-31-22)

03. Veterans' Preference. (3-31-22)

a. Veterans' and disabled veterans' preference 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 65-203, Idaho Code, and the widow or widower of any veteran, as defined in Section 65-203, 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) (3-31-22)

b. Veterans' and disabled veterans' preference points must not be used to achieve a passing score. (3-31-22)

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. (3-31-22)

~~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. (3-31-22)~~

065. 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. (3-31-22)

(BREAK IN CONTINUITY OF SECTIONS)

~~III. **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. (3-31-22)~~

~~1121. -- 118. (RESERVED)~~

(BREAK IN CONTINUITY OF SECTIONS)

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. (3-31-22)

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. (3-31-22)

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~~ **in the employee's personnel file.** (3-31-22)()

(BREAK IN CONTINUITY OF SECTIONS)

~~123. **PROJECT EXEMPT APPOINTMENTS (NON-CLASSIFIED): (RESERVED)**~~

~~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) (3-31-22)~~

124. REINSTATEMENTS.

01. Eligibility. ~~As determined by the administrator, a~~ **Δ** 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). (3-31-22)()

a. Reinstatement is limited to a period equal to the length of the employee's probationary and permanent employment combined. (3-31-22)

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. (3-31-22)

c. The current or former employee must meet the current minimum qualifications of the classification to which reinstatement is desired. (3-31-22)

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. (3-31-22)

03. Examination. ~~The administrator may require a~~ **A** current or former employee **may be required** to pass an examination for the classification to which reinstatement is desired. ~~(3-31-22)~~ **()**

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). (3-31-22)

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. (3-31-22)

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. (3-31-22)

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. (3-31-22)

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) (3-31-22)

04. Limitation. Transfers will not be used to abridge an employee's rights in reduction in force prescribed by Rules 140 through 147. (3-31-22)

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. (3-31-22)

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. (3-31-22)

07. Examination. ~~The administrator may require a~~ **A**n employee transferring between classifications **may be required** to pass an examination for the classification to which transfer is desired. ~~(3-31-22)~~ **()**

08. Involuntary Transfer. Notice and an opportunity to be heard must be given to any employee

subject to an involuntary transfer. (3-31-22)

(BREAK IN CONTINUITY OF SECTIONS)

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: (3-31-22)

a. The incumbent of the position in the higher classification is on authorized leave of absence; or (3-31-22)

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. (3-31-22)

02. Minimum Qualifications. To be eligible for an acting appointment, an employee must meet the minimum qualifications of the class. (3-31-22)

~~**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. (3-31-22)~~

043. Effective Date. The effective date of each acting appointment may be retroactive to the beginning of the pay period during which approval is granted. (3-31-22)

(BREAK IN CONTINUITY OF SECTIONS)

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

(3-31-22)

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. (3-31-22)

a. ~~Grace period. Supervisors have thirty (30) days after each two thousand eighty (2,080) hours an employee works to complete the performance evaluation documentation. During that thirty (30) day time frame, Completing annual evaluation. #~~ The evaluation may be written to cover the **prior** two thousand eighty (2,080) hours or extended to also cover the time frame up to the date of the evaluation. (3-31-22)()

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. (3-31-22)

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. (3-31-22)

03. Veterans' Preference. Veterans as defined in Title 65, Chapter 2, 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) (3-31-22)

04. Calculation Date Cutoff. No points will be calculated for the sixty (60) days prior to the effective date of the layoff. (3-31-22)

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. (3-31-22)

(BREAK IN CONTINUITY OF SECTIONS)

150. PROBATIONARY PERIODS.

01. Probationary Period Required. Except as provided in Rule 040, every appointment and promotion to a classified position is probationary. (3-31-22)

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: (3-31-22)

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. (3-31-22)

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. (3-31-22)

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. (3-31-22)

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) (3-31-22)

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. (3-31-22)

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,y), Idaho Code, and Rules 122 and 150.01) (3-31-22)()

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) (3-31-22)

(BREAK IN CONTINUITY OF SECTIONS)

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) (3-31-22)

02. During Entrance and Voluntary Probation. (3-31-22)

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) (3-31-22)

b. Notice to the employee of termination for unsatisfactory service must be made *not later than at least* fifteen (15) calendar days prior to the effective date of termination, unless there are extenuating circumstances. (3-31-22)()

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. (3-31-22)

02. ~~Intra-Agency During Promotional Probation.~~ 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.~~ (3-31-22)()

03. ~~Inter-Agency.~~ (3-31-22)

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. (3-31-22)

- b. If no position is available for the voluntary demotion option, the employee may be laid off (Ref. Rules 145 and 147) and may: (3-31-22)()
- 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~~ (3-31-22)
- ii. Request their name be placed on a register for the classification ~~in the agency~~ where they last held permanent status. (3-31-22)()
- 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. (3-31-22)()

(BREAK IN CONTINUITY OF SECTIONS)

200. PROBLEM-SOLVING AND DUE PROCESS PROCEDURES.

01. Overview of Procedures. (3-31-22)

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. (3-31-22)

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. (3-31-22)

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. (3-31-22)

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. (3-31-22)

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). (3-31-22)

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. (3-31-22)

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 five (105)~~ working days after the employee has received notice, unless ~~both the employee and agency agree otherwise~~ an extension is approved by the appointing authority 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 five (105)~~ working days thereafter, excluding days the appointing authority, or designee, is out of the office, ~~unless both the employee and agency agree otherwise or for other extenuating circumstances. The extension will be communicated to the employee~~ 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. (3-31-22)()

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. (3-31-22)

~~**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. (3-31-22)~~

(BREAK IN CONTINUITY OF SECTIONS)

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. (3-31-22)()

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. (3-31-22)

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. (3-31-22)

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. (3-31-22)

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) (3-31-22)

IDAPA 17 – INDUSTRIAL COMMISSION

17.01.01 – ADMINISTRATIVE RULES UNDER THE WORKER'S COMPENSATION LAW

DOCKET NO. 17-0101-2201

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 2023 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 Sections 72-301, 72-301A, 72-304, 72-327, 72-432, 72-508, 72-528, 72-602, 72-803, and 72-806, 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.

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 July 6, 2022 Idaho Administrative Bulletin, [Vol. 22-7, pages 121 through 123](#).

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 rule is not anticipated to have any impact on the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kamerron Slay, 208-334-6017 or kamerron.slay@iic.idaho.gov.

DATED this 26th day of October, 2022.

George Gutierrez
Director
Industrial Commission
11321 W. Chinden Blvd.
Boise, Idaho 83714
(208) 334-6000

THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2022.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 72-301, 72-301A, 72-304, 72-327, 72-432, 72-508, 72-528, 72-602, 72-803, and 72-806, 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 July 20, 2022.

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 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:

The current I.C. 72-404 requires the Commission to review all settlements in order to be satisfied that settlements are in the best interest of the parties. The current IDAPA 17.01.01.802.b.vii. requires attorneys to identify medical bills which are unpaid at the time of settlement and describe the treatment to be given to such bills from the proceeds of settlement. Resolution of unpaid bills is in the best interest of the claimant. HB 590 repeals the current I.C. 72-404 and replaces it with a new version of the statute which removes Commission responsibility to approve settlements in most cases. Accordingly, the Commission no longer has an interest in requiring claimants to specify how unpaid medical bills will be treated at the time of settlement. Removing this section of IDAPA is consistent with the new provisions of I.C. 72-404.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This temporary rule will confer a benefit to all parties to settlements by conforming the rule to the provisions of the new statute.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There is no fee imposed or increased by this rulemaking.

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.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this temporary rule is eliminating redundant language and to align with implementing HB590.

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: There are not incorporated documents in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kamerron Slay, 208-334-6017 or kamerron.slay@iic.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this May 25, 2022.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0101-2201

802. RULE GOVERNING APPROVAL OF ATTORNEYS FEES.

- 01. Purpose.** The Industrial Commission promulgates this rule to govern the approval of attorney fees. (3-23-22)
- 02. Charges Presumed Reasonable:** (3-23-22)
- a.** In a case in which no hearing on the merits has been held, twenty-five percent (25%) of Available Funds shall be presumed reasonable; or (3-23-22)
- b.** In a case in which a hearing has been held and briefs submitted (or waived) under Judicial Rules of Practice and Procedure (JRP), Rules X and XI, thirty percent (30%) of Available Funds shall be presumed reasonable; or (3-23-22)
- c.** In any case in which compensation is paid for total permanent disability, fifteen percent (15%) of such disability compensation after ten (10) years from date such total permanent disability payments commenced. (3-23-22)
- 03. Statement of Charging Lien.** (3-23-22)
- a.** All requests for approval of fees shall be deemed requests for approval of a Charging Lien. (3-23-22)
- b.** An attorney representing a Claimant in a Worker's Compensation matter shall in any proposed LSS, or upon request of the Commission, file with the Commission, and serve the Claimant with a copy of the Fee Agreement, and an affidavit or memorandum containing: (3-23-22)
- i.** The date upon which the attorney became involved in the matter; (3-23-22)
- ii.** Any issues which were undisputed at the time the attorney became involved; (3-23-22)
- iii.** The total dollar value of all compensation paid or admitted as owed by employer immediately prior to the attorney's involvement; (3-23-22)
- iv.** Disputed issues that arose subsequent to the date the attorney was hired; (3-23-22)
- v.** Counsel's itemization of compensation that constitutes Available Funds; (3-23-22)
- vi.** Counsel's itemization of costs and calculation of fees; and (3-23-22)
- vii.** ~~Counsel's itemization of medical bills for which Claim was made in the underlying action, but which remain unpaid by employer/surety at the time of LSS, along with counsel's explanation of the treatment to be given such bills/claims following approval of the LSS.~~ (3-23-22)
- viii.** The statement of the attorney identifying with reasonable detail his or her fulfillment of each element of the Charging Lien. (3-23-22)
- c.** Upon receipt and a determination of compliance with this Rule by the Commission by reference to its staff, the Commission may issue an Order Approving Fees without a hearing. (3-23-22)

04. Procedure if Fees Are Determined Not to Be Reasonable. (3-23-22)

a. Upon receipt of the affidavit or memorandum, the Commission will designate staff members to determine reasonableness of the fee. The Commission staff will notify counsel in writing of the staff's informal determination, which shall state the reasons for the determination that the requested fee is not reasonable. Omission of any information required by Paragraph 802.02.b may constitute grounds for an informal determination that the fee requested is not reasonable. (3-23-22)

b. If counsel disagrees with the Commission staff's informal determination, counsel may file, within fourteen (14) days of the date of the determination, a Request for Hearing for the purpose of presenting evidence and argument on the matter. Upon receipt of the Request for Hearing, the Commission shall schedule a hearing on the matter. A Request for Hearing shall be treated as a motion under Rule III(e), JRP. (3-23-22)

c. The Commission shall order an employer to release any Available Funds in excess of those subject to the requested Charging Lien and may order payment of fees subject to the Charging Lien which have been determined to be reasonable. (3-23-22)

d. The proponent of a fee which is greater than the percentage of recovery stated in Subsection 802.02 shall have the burden of establishing by clear and convincing evidence entitlement to the greater fee. The attorney shall always bear the burden of proving by a preponderance of the evidence his or her assertion of a Charging Lien and reasonableness of his or her fee. (3-23-22)

05. Disclosure Statement. Upon retention, the attorney shall provide to Claimant a copy of a disclosure statement. No fee may be taken from a Claimant by an attorney on a contingency fee basis unless the Claimant acknowledges receipt of the disclosure by signing it. Upon request by the Commission, an attorney shall provide a copy of the signed disclosure statement to the Commission. The terms of the disclosure may be contained in the Fee Agreement, so long as it contains the following text: (3-23-22)

a. In worker's compensation matters, attorney's fees normally do not exceed twenty-five percent (25%) of the benefits your attorney obtains for you in a case in which no hearing on the merits has been completed. In a case in which a hearing on the merits has been completed, attorney's fees normally do not exceed thirty percent (30%) of the benefits your attorney obtains for you. (3-23-22)

b. Depending upon the circumstances of your case, you and your attorney may agree to a higher or lower percentage which would be subject to Commission approval. Further, if you and your attorney have a dispute regarding attorney fees, either of you may petition the Industrial Commission, PO Box 83720, Boise, ID 83720-0041, to resolve the dispute. (3-23-22)

IDAPA 17 – INDUSTRIAL COMMISSION

17.01.01 – ADMINISTRATIVE RULES UNDER THE WORKER'S COMPENSATION LAW

DOCKET NO. 17-0101-2202

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 2023 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 Sections 72-301, 72-301A, 72-304, 72-327, 72-432, 72-508, 72-528, 72-602, 72-803, and 72-806, 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.

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 7, 2022, Idaho Administrative Bulletin, [Vol. 22-9, pages 202 through 204](#).

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 rule is not anticipated to have any impact on the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kamerron Slay, 208-334-6017 or kamerron.slay@iic.idaho.gov.

DATED this 26th day of October, 2022.

George Gutierrez
Director
Industrial Commission
11321 W. Chinden Blvd.
Boise, Idaho 83714
(208) 334-6000

THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 3, 2022.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, 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, 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 21, 2022.

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 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: The Commission wishes to implement an update to the electronic claim reporting standard as a more efficient alternative to the maintenance of paper claims. The implementation date is coordinated with the Commission's broader systems modernization effort.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: The rule would confer a benefit by revising the implementation date of the proposed update of the electronic claim reporting standard to September 14, 2023.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There is no fee imposed or increased by this rulemaking.

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.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this temporary rule is simply revising the implementation date of the planned update of the electronic claim reporting standard to September 14, 2023.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kamerron Slay, 208-334-6017 or kamerron.slay@iic.idaho.gov

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2022.

DATED this 3rd day of August, 2022.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0101-2202

002. WRITTEN INTERPRETATIONS.

The Industrial Commission uses the following guidelines for implementing the EDI reporting requirements set out in this Chapter: (3-23-22)

01. EDI Guide and Tables. The Idaho Industrial Commission Claims EDI Implementation Guide and Trading Partner Tables (“EDI Guide and Tables”). The Idaho Industrial Commission Claims EDI Implementation Guide and Trading Partner Tables are available on the Commission's website at <https://iic.idaho.gov/>. (3-23-22)

02. EDI Implementation Guide. International Association of Industrial Accidents Boards and Commissions (IAIABC) EDI Claims Release 3.0 or, after ~~December 1, 2022~~ September 14, 2023, Release 3.1, Implementation Guide (“EDI Implementation Guide”). The IAIABC Claims Release 3.0 and Release 3.1 Implementation Guides are available at the IAIABC website at <https://www.iaiacb.org>. ~~(3-23-22)~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

601. SUBMISSION OF FROI AND SROI.

01. Purpose. Pursuant to Sections 72-602(1)-(2), Idaho Code, employers must submit a FROI and/or SROI in accordance with these rules. (3-23-22)

02. EDI Reporting. The Commission requires electronic submission of FROIs and SROIs in accordance with the most current versions of the IAIABC EDI Claims Release 3.0, or release 3.1 after ~~December 1, 2022~~ September 14, 2023, and the Commission's EDI Guides and Tables from any employer not otherwise exempt by these rules. Each FROI and SROI must comply with formatting requirements and must contain the information identified as mandatory or mandatory conditional, as applicable. ~~(3-23-22)~~ ()

03. Trading Partner Agreements. Before commencing with electronic reporting, Trading Partners shall electronically submit a Trading Partner Agreement with the Commission, which the Commission must approve prior to submitting reports. This agreement must provide the effective date to send and receive electronic reports, the acceptable data to be sent and received, the method of transmission to be used, and other pertinent elements. This agreement will identify the insurance carrier, the Claims Administrator, the sender of the electronic files, and the electronic filing method. To ensure the accuracy of reported data, the Trading Partner must maintain their profile to reflect changes as they occur and the Commission may make periodic audits of Trading Partner files. In the event that a Trading Partner Agreement is entered into by a Claims Administrator, notice to the Trading Partner of a FROI shall be deemed to be notice to the underlying insurance carrier or self-insured employer. (3-23-22)

04. Report Form and Content for Parties Exempt from EDI Requirements. (3-23-22)

a. Individual injured workers, injured worker's legal counsel, and employers that are not insured are not required to comply with EDI requirements for FROIs and SROIs. (3-23-22)

b. Parties exempt from EDI requirements must submit FROIs on a form 1A-1 and SROIs on a form IC-8, or in a format substantially similar. Both forms are available on the Commission's website. (3-23-22)

05. Retaining Claims Files. Upon request of the Commission, insurance carriers, Claims Administrators, or employers shall provide to the Commission, in whole or in part according to the request, a copy of the claim file at no cost to the Commission. All insurance carriers, Claims Administrators, or employers shall retain complete copies of claims files for the life of the Claim and a minimum of five (5) years from the date of closure. (3-23-22)

06. Filing Not an Admission. Filing a FROI is not an admission of liability and is not conclusive evidence of any fact stated therein. If a Claim is submitted electronically, no signatures are required. (3-23-22)

07. Filing Considered Authorization. Filing of a Claim shall be considered an authorization for the

release of medical records that are relevant to or bearing upon the particular injury or occupational disease for which the Claimant is seeking compensation. (3-23-22)

08. Timely Response Requirement. When the Commission requests additional information in order to process the Claim, the Claimant or employer shall provide the requested information promptly. The Commission request may be either in writing or telephonic. (3-23-22)

602. FINAL REPORTS.

01. Report Requirements. An electronic filing of the Final Report as prescribed by Commission EDI requirements shall be filed for all indemnity claims or any claims resolved by lump sum settlement within thirty (30) days from the date the surety or self-insured employer closes the claim file. In the case of medical-only claims, no Final Report need be filed. For death claims and permanent total disability claims, Annual Reports shall be filed within the first quarter of each calendar year. A Final Report shall be filed within thirty (30) days from the date the surety or self-insured employer closes the death or permanent total disability claim file. In the event the Commission is unable to reconcile the Annual Report or Final Report, a request for additional information may be made, either in writing or telephonically, and the surety or self-insured employer shall submit the requested information within fifteen (15) working days of the request. If the surety or self-insured employer is unable to furnish the requested information, the surety or self-insured employer shall notify the Commission, in writing, of its inability to respond and the reasons therefor within fifteen (15) workings days of the request. (3-23-22)

02. Format. The required format for Final Reports is contingent on the claim file date: (3-23-22)

a. Final Reports for legacy claims filed on paper or via EDI Claims 1.0 prior to November 4, 2017, shall be submitted in a format substantially similar to IC Form 6, available on the Commission's website, or EDI Claims Release 3.1 after ~~December 1, 2022~~ **September 14, 2023**. (~~3-23-22~~)()

b. Final Reports for legacy claims filed via EDI Claims 3.0 shall be submitted electronically via EDI Claims 3.0, or EDI Claims 3.1 after ~~December 1, 2022~~ **September 14, 2023**. (~~3-23-22~~)()

03. Change in Status of Employer. In case of any default by the Employer or in the event the Employer shall fail to pay any final award or awards, by reason of insolvency or because a receiver has been appointed, the receiver or successor shall continue to report to the Commission, including the submission of Annual Reports, Final Reports and schedules of outstanding awards. (3-23-22)

IDAPA 17 – INDUSTRIAL COMMISSION
17.11.01 – ADMINISTRATIVE RULES OF PEACE OFFICER AND
DETENTION OFFICER TEMPORARY DISABILITY ACT
DOCKET NO. 17-1101-2201 (ZBR CHAPTER REWRITE)
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 2023 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 72-1104, 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.

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 October 5, 2022, Idaho Administrative Bulletin, [Vol. 22-10, pages 325 through 327](#).

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 rule is not anticipated to have any impact on the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kamerron Slay, 208-334-6017 or kamerron.slay@iic.idaho.gov.

DATED this 31st day of October, 2022.

George Gutierrez
Director
Industrial Commission
11321 W. Chinden Blvd.
Boise, Idaho 83714
(208) 334-6000

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 72-1104, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

Virtual Public Hearing via WebEx
Tuesday, October 11, 2022 1:00 p.m. to 2:00 p.m. (MT)
Join from the meeting link https://idahogov.webex.com/idahogov/j.php?MTID=m7c98976f7a1802aa314a3e8ba707b9c1
Join by Phone: 1-415-655-0001
Meeting access code: 2454 910 5724
Meeting password: MXjMPXTb872

Virtual Public Hearing via WebEx
Thursday, October 20, 2022 10:30 a.m. to 11:30 a.m. (MT)
Join from the meeting link https://idahogov.webex.com/idahogov/j.php?MTID=m06b78170452649095d8d237214918410
Join by Phone: 1-415-655-0001
Meeting access code: 2459 297 3645
Meeting password: 73ZmzJXw4jW

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: In accordance with [Executive Order 2020-01: Zero-Based Regulation](#), the Industrial Commission is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. The rule changes are intended to perform a comprehensive review of this chapter by collaborating with the public to streamline or simplify this rule language.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There is no fee or charge imposed or increased.

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 as a result of this rulemaking: This rulemaking is not anticipated to have any fiscal impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2022 Idaho Administrative Bulletin, [Vol 22-4, pages 35-36](#).

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: There are no incorporations by reference contained in this chapter of administrative rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kamerron Slay at 208-334-6017.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Kamerron Slay, 208-334-6017 or kamerron.slay@iic.idaho.gov and must be delivered on or before October 31, 2022.

DATED this 31st day of August.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 17-1101-2201

**17.11.01 – ADMINISTRATIVE RULES OF PEACE OFFICER AND
DETENTION OFFICER TEMPORARY DISABILITY ACT**

000. LEGAL AUTHORITY.

Section 72-1104, Idaho Code. ()

001. SCOPE.

This chapter includes the Industrial Commission's rules regarding the Peace Office Temporary Disability Fund. ()

002. -- 010. (RESERVED)

**011. RULE GOVERNING APPLICATIONS FOR REIMBURSEMENT FROM THE PEACE OFFICER
AND DETENTION OFFICER TEMPORARY DISABILITY FUND.**

01. Application. An employer eligible to seek reimbursement from the Peace Officer and Detention Officer Temporary Disability Fund may do so on the form provided by the Commission, available online. ()

02. Payments. Payments to employers requesting reimbursement from the Peace Officer and Detention Officer Temporary Disability Fund will be made within thirty (30) days of receipt of an approved request for reimbursement, subject to the availability of money in that fund. ()

03. Disputes. To the extent practicable, disputes arising under Chapter 11, Title 72 will be resolved by the Industrial Commission in accordance with the Judicial Rules of Practice and Procedure under the Idaho Workers' Compensation laws (JRP) and statutes governing the resolution of disputes in Workers' Compensation cases. Dispute resolution is initiated by the filing of a complaint. ()

012. -- 999. (RESERVED)

IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

18.02.02 – AUTOMOBILE INSURANCE POLICIES

DOCKET NO. 18-0202-2201 (ZBR CHAPTER REWRITE)

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 2023 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 Sections 41-211 and 41-2502(3), 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 rule provides uniform interpretation and implementation of Section 41-2502, 41-2506, 41-2507, 41-2508, and 41-2509, Idaho Code, relating to insurance cancellation, non-renewal, and under/uninsured motorist coverages. This rulemaking clarifies language, removes duplicative language, and directs to the Department's website for certain information. It also improves transparency to consumers as to their underinsured motorist coverage.

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 July 6, 2022, Idaho Administrative Bulletin, [Vol. 22-7, pages 125 to 126](#).

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: None.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Wes Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

DATED this October 6, 2022.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID, 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

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 Sections 41-211 and 41-2502(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

<p>Tuesday, July 26, 2022 2:00 p.m. to 3:30 p.m. (MT)</p>
<p><i>In-person participation is available at:</i> Department of Insurance 700 W State St, 3rd Floor Conference Room A Boise, Idaho 83702</p>
<p><i>Phone or virtual participation via Webex is available at:</i> Join WebEx Meeting Meeting Number (Access Code): 2451 825 4219 Meeting Password: fN4m3AqFSr3</p>
<p><i>Join by phone at: 1-720-650-7664 (USA Toll Free)</i></p>

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this rule provides implementation and uniform interpretation of Section 41-2502, 41-2506, 41-2507, 41-2508, and 41-2509, relating to insurance cancellation, non-renewal, and under/uninsured motorists. This rulemaking clarifies language, removes duplicative language, and moves information to the Department's website. It also improves transparency to consumers as to their underinsured motorist coverage.

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 as a result of this rulemaking: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2022 Idaho Administrative Bulletin, [Vol. 22-04, pages 37-38](#), under Docket No. 18-ZBRR-2201.

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 Weston Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

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 July 27, 2022.

DATED this June 3, 2022.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 18-0202-2201

18.02.02 – AUTOMOBILE INSURANCE POLICIES

000. LEGAL AUTHORITY.

Title 41, Chapter 25, Idaho Code. ()

001. SCOPE.

Assists in implementing and interpreting Sections 41-2502, and 41-2506 through 41-2509, Idaho Code. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Act. “The Act” means Sections 41-2506 through 41-2512, Idaho Code. ()

02. Conviction. For purposes of Section 41-2507, Idaho Code, the term “conviction” means a final conviction by any court having competent jurisdiction over violations of laws regulating the operation of motor vehicles. An overtime parking violation is not considered a conviction. ()

03. Underinsured Motorist (UIM) Coverage Types. “Offset” or “Difference in Limits” UIM coverage has limits that decrease by any amounts recovered from another party’s insurance. “Excess” UIM coverage has limits that are added to what is paid by another party’s insurance. ()

011. MISREPRESENTATIONS IN THE APPLICATION.

After properly notifying the insured, an insurer may cancel or refuse to renew a policy if the insurer has evidence the named insured or their legal representative made fraudulent or material misrepresentations, omissions, concealment of facts or incorrect statements in obtaining the policy and if the insurer in good faith would not have issued the policy or covered a particular hazard if the true facts had been made known to the insurer. This is not to be construed to allow the insurer to void or rescind coverage to prevent a recovery in the event of a loss otherwise insured by the policy. ()

012. TERMINATION TIMING.

Unless otherwise agreed by the insured, insurer, and the lienholder, if any, the time and date of cancellation of a policy for nonpayment of premium will be no earlier than ten (10) days after the date such notice was mailed or delivered at the last known address of the named insured. The date of mailing is the first day, and the tenth day ends at midnight. Any existing policy will terminate on the effective date of another policy procured by the insured with respect to any automobile designated in both policies and containing duplicate insurance coverage. ()

013. NOTICE OF PREMIUM DUE AS INSURER’S WILLINGNESS TO RENEW.

An insurer’s mailing of the renewal premium notice constitutes the insurer’s willingness to renew. If the insured fails to pay the renewal premium when due, the policy will terminate per its terms. The insurer need not further notify the insured of the insurer’s intent not to renew for nonpayment. ()

014. ACCEPTABLE FORMS FOR CERTAIN NOTICES.

The insurer will prepare forms of notice to use and submit to the Director for approval. Examples of acceptable language are available on the Department's website. ()

015. UNINSURED AND UIM COVERAGE.

a. The form on the Department's website is the standard statement per Section 41-2502(3), Idaho Code. Carriers are to provide the form with all new policies and renewals. Carriers may make non-substantive changes to this form, for example, inserting company letterhead. Carriers need to file their standard statement form with the Director prior to use ()

b. The carrier's Declarations Page for "offset" UIM coverage is to indicate that the coverage decreases by any payments from another party's coverage. ()

c. To avoid illusory coverage, insurers may offer "offset" UIM coverage at the state financial responsibility limits defined in Section 49-117(20), Idaho Code, only if coverage is provided at no (\$0.00) premium. ()

016. -- 999. (RESERVED)

IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE
18.02.03 – CERTIFICATE OF LIABILITY INSURANCE FOR MOTOR VEHICLES
DOCKET NO. 18-0203-2201 (ZBR CHAPTER REWRITE)
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 2023 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 Sections 41-211, 49-1229, 49-1231, and 49-1608A, 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 rule identifies requirements of Sections 49-1229, 49-1231, and 49-1608A, Idaho Code, relating to the certificate of liability insurance for motor vehicles. This rulemaking clarifies language and removes duplicative language.

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 July 6, 2022 Idaho Administrative Bulletin, [Vol. 22-7, pages 127 to 129](#).

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: None.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Wes Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

DATED this October 6, 2022.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID, 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

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 Sections 41-211, 49-1129, 49-1231, and 49-1608A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

<p>Tuesday, July 26, 2022 2:00 p.m. to 3:30 p.m. (MT)</p>
<p><i>In-person participation is available at:</i> Department of Insurance 700 W State St, 3rd Floor Conference Room A Boise, Idaho 83702</p> <p><i>Phone or virtual participation via Webex is available at:</i> Join WebEx Meeting Meeting Number (Access Code): 2451 825 4219 Meeting Password: fN4m3AqFSr3</p> <p><i>Join by phone at: 1-720-650-7664 (USA Toll Free)</i></p>

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this rule identifies requirements of Sections 49-1129, 49-1331, and 49-1608A, Idaho Code, relating to the certificate of liability insurance for motor vehicles. This rulemaking clarifies language and removes duplicative language.

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 as a result of this rulemaking: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2022 Idaho Administrative Bulletin, Vol. 22-04, pages 37-38, under Docket No. 18-ZBRR-2201.

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 Weston Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

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 July 27, 2022.

DATED this June 3, 2022.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 18-0203-2201

18.02.03 – CERTIFICATE OF LIABILITY INSURANCE FOR MOTOR VEHICLES

000. LEGAL AUTHORITY.

Title 49, Sections 49-1229, 49-1231, and 49-1608A, Idaho Code. ()

001. SCOPE.

To identify the form of a certificate of liability insurance for motor vehicles per Sections 49-1229, 49-1231 and 49-1608A, Idaho Code. ()

002. -- 010. (RESERVED)

011. CONTRACT OF INSURANCE -- CERTIFICATE OF LIABILITY INSURANCE.

A certificate of liability insurance can be the original liability insurance contract, or a copy thereof, or a written binder, showing active motor vehicle liability insurance in at least the applicable amounts prescribed by Sections 49-117(20), 49-1212, 49-1229, and 49-1608A, Idaho Code, and also any other coverage prescribed by Title 41, Idaho Code. ()

012. MINIMUM SPECIFICATIONS FOR A CERTIFICATE OF LIABILITY INSURANCE IN LIEU OF THE CONTRACT OF INSURANCE.

A document constitutes a certificate of liability insurance if it has these characteristics: ()

01. Individual-Owned Motor Vehicles. ()

a. Identifies the insurer or surety company authorized to do business in Idaho. ()

b. States the name and address of the owner of the insured motor vehicle. ()

c. Describes the motor vehicle including an identification number or the words “all owned vehicles” if more than one vehicle is insured. ()

d. Shows the date coverage begins. ()

e. Shows either that coverage ends after a fixed date or period, or when cancelled. ()

f. May show of the insurance policy or document number. ()

02. Dealer and Manufacturer Vehicles. ()

- a. Identifies the insurer or surety company authorized to do business in Idaho. ()
- b. States the name and address of the dealership or owner(s) of the insured motor vehicle. ()
- c. Shows the date coverage begins. ()
- d. Shows either that coverage ends after a fixed date or period, or when cancelled. ()
- e. May show the insurance policy or document number. ()

013. EXAMPLES OF A DOCUMENT FORMAT.

The Department's website includes examples of documents that would satisfy these specifications for a certificate of liability insurance. ()

014. -- 999. (RESERVED)

IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

18.07.01 – RULES FOR ACQUIRING CONTROL, INSURANCE HOLDING COMPANY SYSTEMS AND MUTUAL INSURANCE HOLDING COMPANIES

DOCKET NO. 18-0701-2201 (ZBR CHAPTER REWRITE)

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 2023 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 Sections 41-211 and 41-3817, 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 rule sets forth rules and procedural requirements necessary to administer the Idaho Acquisitions of Control and Insurance Holding Company Systems Regulatory Act, including provisions relating to Section 41-3824, Idaho Code, on mutual holding companies. This rulemaking clarifies language and removes duplicative language.

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 July 6, 2022 Idaho Administrative Bulletin, [Vol. 22-7, pages 130 to 142](#).

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: None.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Wes Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

DATED this October 6, 2022.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
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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 Sections 41-211 and 41-3817, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

<p>Tuesday, July 26, 2022 2:00 p.m. to 3:30 p.m. (MT)</p>
<p><i>In-person participation is available at:</i> Department of Insurance 700 W State St, 3rd Floor Conference Room A Boise, Idaho 83702</p> <p><i>Phone or virtual participation via Webex is available at:</i> Join WebEx Meeting Meeting Number (Access Code): 2451 825 4219 Meeting Password: fN4m3AqFSr3</p> <p><i>Join by phone at: 1-720-650-7664</i></p>

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this rule sets forth rules and procedural requirements necessary to administer the Idaho Acquisitions of Control and Insurance Holding Company Systems Regulatory Act, including provisions relating to Section 41-3824 on mutual holding companies. This rulemaking clarifies language and removes duplicative language.

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 as a result of this rulemaking: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2022 Idaho Administrative Bulletin, [Vol. 22-04, pages 37-38](#), under Docket No. 18-ZBRR-2201.

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 Weston Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

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 July 27, 2022.

DATED this June 3, 2022.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 18-0701-2201

18.07.01 – RULES FOR ACQUIRING CONTROL, INSURANCE HOLDING COMPANY SYSTEMS AND MUTUAL INSURANCE HOLDING COMPANIES

000. LEGAL AUTHORITY.

Title 41, Chapters 2 and 38, Sections 41-211 and 41-3817, Idaho Code. ()

001. SCOPE.

These rules administer the Idaho Acquisitions of Control and Insurance Holding Company Systems Regulatory Act including its MHC provisions. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

These definitions supplement those in Chapter 38, Title 41, Idaho Code: ()

01. Affiliated Person. ()

a. Any person directly or indirectly owning, controlling, or holding with power to vote, five percent (5%) or more of another person's outstanding voting securities; or ()

b. Any person, five percent (5%) or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by another person; or ()

c. Any person directly or indirectly controlling, controlled by, or under common control with, another person; or ()

d. Any officer, director, partner, copartner, or employee of another person. ()

02. Domestic Mutual Insurance Company. A mutual insurer as defined in Section 41-302, Idaho Code, that is incorporated under Idaho law. ()

03. Executive Officer. Chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by those officers under whatever title. ()

04. Interested Person. Interested person means: ()

a. An affiliated person of another person or company; or ()

b. A member of the immediate family of any natural person who is an affiliated person of another company; or ()

c. Any person, partner or employee of any person who, at any time in a company's last two completed fiscal years, has acted as the company's lawyer; or ()

d. Any natural person whom the Director, by order, finds to be an interested person because the person had, at any time during a company's last two completed fiscal years, a material business or professional relationship with that company or its principal executive officer. ()

05. Intermediate Holding Company. A subsidiary of a MHC or part of a MHC-controlled holding company system. ()

06. Limited Application. A domestic mutual insurance company's application to reorganize as a MHC that will hold, at all times, all of the stock of its insurance subsidiaries. ()

07. Member of the Immediate Family. Any parent, or child, and their spouses, siblings, including step and adoptive relationships. ()

08. MHC. A mutual insurance holding company under Section 41-3824, Idaho Code. ()

09. Plan of Reorganization. A plan to reorganize a domestic mutual insurance company by forming a MHC. ()

10. Standard Application. A domestic mutual insurance company's application to reorganize as a MHC that may sell interests in its subsidiaries to third parties. ()

11. Stock. Any security showing an equity interest in the issuing entity. ()

12. Stock Offering. Any proposed sale, exchange, transfer or change of ownership of stock or of securities convertible into, or exchangeable or exercisable for, stock. "Stock offering" does not mean: ()

a. An offering of preferred stock without ordinary voting rights that is not convertible or exchangeable into common stock; or ()

b. A stock transfer between entities in a MHC system, including the MHC, intermediate holding company, and any insurance company subsidiaries. ()

13. Ultimate Controlling Person. A person not controlled by another person. ()

011. FORMS -- GENERAL REQUIREMENTS.

01. Forms As Guides. Forms A, B, C, D, E, and F included on the Department's website are guides for persons filing statements prescribed by Title 41, Chapter 38, Idaho Code, and not intended as fillable blank forms. Statements need to contain the numbers and captions for all items. ()

02. Filings. Each statement, including all exhibits, papers, and documents are to be electronically filed with the Director, and a hard copy personally delivered or mailed. Sign at least one (1) copy as stated on the form. If a signature is affixed pursuant to a power of attorney or similar authority, file a copy of the power of attorney or other authority with the statement. ()

03. Format. Prepare statements in English, using United States currency, and be easily readable and suitable for review and reproduction. Debits in credit categories and credits in debit categories should be clearly distinguishable on photocopies. ()

04. Hearing. If an applicant requests a consolidated hearing under Section 41-3806(3), Idaho Code,

then besides filing Form A with the Director, the applicant will electronically file a copy of Form A with the National Association of Insurance Commissioners. ()

012. FORMS -- INCORPORATION BY REFERENCE, SUMMARIES AND OMISSIONS.

01. Incorporation by Reference. Information prescribed by any item on a Form may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or other document may be incorporated by reference in answer or partial answer to any item if the document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits. Documents need not be attached as exhibits if filed with the Director within the previous three (3) years. References to information in exhibits or documents already on file need to clearly identify that information and indicate it is incorporated by reference. Information cannot be incorporated by reference if doing so would make the statement incomplete, unclear or confusing. ()

02. Summaries or Outlines. When any Form requires a summary or outline, briefly explain the document's pertinent provisions. The summary or outline may incorporate by reference parts of any exhibit or document filed with the Director within the three (3) prior years. If documents filed as exhibits are substantially identical except as to parties, dates of execution, or other details, one (1) document should be filed with a schedule identifying the omitted documents and any material details in which the omitted documents differ from the filed documents. ()

013. FORMS -- INFORMATION UNKNOWN OR UNAVAILABLE AND EXTENSION OF TIME TO FURNISH.

For items that cannot be furnished at the time prescribed, the filer will: identify the information, document or report in question; state why its impractical to file it when prescribed; and request an extension to file it on a specified date. The extension request is deemed granted unless the Director issues an order denying the request within twenty-eight (28) days of receipt. ()

014. FORMS -- ADDITIONAL INFORMATION AND EXHIBITS.

In addition to expressly prescribed information, the Director may request additional information necessary for clarification. The filer may file exhibits besides those expressly necessary by the statement, clearly indicating the subject matters to which they refer. At the top of the cover page for changes to content in necessary Forms state "Change No. [insert number] to" and date of the change. ()

015. SUBSIDIARIES OF DOMESTIC INSURERS.

The authority to invest in subsidiaries under Section 41-3803, Idaho Code, is in addition to authority to invest in subsidiaries from any other provision of Title 41, Idaho Code. ()

016. ACQUISITION OF CONTROL -- STATEMENT FILING.

A person filing under Section 41-3804, Idaho Code, will furnish the prescribed information on Forms A and E. ()

017. AMENDING FORM A.

The applicant will promptly advise the Director of changes in Form A information arising after it was filed but before the Director's disposition of the application. ()

018. ACQUIRING SECTION 41-3804(1)(D) INSURERS.

01. Domestic Insurer's Name. If a "domestic insurer" under Section 41-3804(1)(d), Idaho Code, is being acquired, then include in the application's cover page the domestic insurer's name in this format: "ABC Insurance Company, a subsidiary of XYZ Holding Company." ()

02. References to Insurer. Where a Section 41-3804(1)(d) insurer is acquired, Form A's references to "the insurer" mean both the domestic subsidiary insurer and the acquired person. ()

019. PRE-ACQUISITION NOTIFICATION.

01. Pre-Acquisition Notification. If a domestic insurer, including any controlling person, proposes a merger or acquisition per Section 41-3808(1)(a), Idaho Code, they will file Form E. If a licensed non-domiciliary insurer proposes a merger or acquisition per Section 41-3808, Idaho Code, they will file Form E unless exempted by Section 41-3808(2), Idaho Code. ()

02. Experts. The director may request an expert opinion regarding the competitive impact of the proposed acquisition. ()

020. ANNUAL REGISTRATION OF INSURERS -- STATEMENT FILING.

An insurer filing under Section 41-3809, Idaho Code, will complete Form B. ()

021. SUMMARY OF REGISTRATION -- STATEMENT FILING.

An insurer filing an annual registration under section 41-3809, Idaho Code, will also complete Form C. ()

022. AMENDING FORM B.

01. Amending Form B. An insurer will file any amendments to Form B within fifteen (15) days after the end of any month in which there is a material change to the information in the annual registration. ()

02. Form B Format. Amendments are filed on Form B including only the amended items. The top of the cover page for each amendment will state "Amendment No. [insert number] to Form B for [insert year]" and the date of the change, not the date of the original filings. ()

023. ALTERNATIVE AND CONSOLIDATED REGISTRATIONS.

01. Filing on Behalf of Affiliated Insurers. An authorized insurer may file a registration statement for an affiliated insurer or insurers. The registration statement may include information about any insurer in the holding system, even if the insurer is not authorized to do business in Idaho. In lieu of Form B, an authorized insurer may file a copy of the registration statement or similar report on file with its state of domicile if: ()

a. The filing contains substantially similar information prescribed on Form B; and ()

b. The filer is the principal insurance company in the insurance holding company system. ()

02. Statement That Filing Insurer Is the Principal Insurer. An insurer filing in lieu of Form B for an affiliated insurer will state facts substantiating the filing insurer's claim that it is the principal insurer in the insurance holding system. ()

03. Unauthorized Insurer. With the Director's prior approval, an unauthorized insurer may follow any procedures under Subsection 023.01. ()

04. Consolidated Registration Statements. An insurer may follow Section 41-3809(8), or 41-3809(9), Idaho Code, without the Director's prior approval. The Director may request individual filings if necessary for clarity, ease of administration, or the public good. ()

024. DISCLAIMERS AND TERMINATION OF REGISTRATION.

01. Information Requisite. A disclaimer of affiliation or a request for termination of registration, on the basis that a person does not, or will not, upon the taking of some proposed action, control another person (the "subject"), will state: ()

a. The number of the subject's authorized, issued and outstanding voting securities; ()

b. For the person whose control is denied and all the person's affiliates, the number and percentage of shares of the subject's voting securities that are held of record or known to be beneficially owned, and the number of shares for which there is a direct or indirect right to acquire; ()

c. All material relationships and bases for affiliation between the subject and the person whose control is denied and all their affiliates: ()

d. Why such person should not be considered to control the subject. ()

02. Request Deemed Granted. A request to terminate registration is deemed granted unless the Director notifies the filer otherwise within thirty (30) days after the request is received. ()

025. TRANSACTIONS SUBJECT TO PRIOR NOTICE - NOTICE FILING.

01. Form D. When an insurer notifies the Department of a proposed transaction under Section 41-3810, Idaho Code, the insurer will verify the information in Subsection 025.02 on Form D. ()

02. Agreements. Terms for cost sharing services and management services will at a minimum: ()

a. Identify the person providing services and the nature of such services; ()

b. Set forth the methods to allocate costs; ()

c. Prescribe timely settlement, at least on a quarterly basis, and compliance with the requirements in the Accounting Practices and Procedures Manual; ()

d. Bar advancement of funds by the insurer to the affiliate except to pay for services specified in the agreement; ()

e. State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance; ()

f. Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement; ()

g. Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer; ()

h. State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer; ()

i. Include standards for termination of the agreement with and without cause; ()

j. Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services; ()

k. Specify that, if the insurer is placed in receivership or seized by the Director under Title 41, Chapter 33, Idaho Code: ()

i. All of the rights of the insurer under the agreement extend to the Director; and ()

ii. All books and records will immediately be made available to the Director, and will be turned over to the Director immediately upon the Director's request; ()

l. Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to Title 41, Chapter 33, Idaho Code; and ()

m. Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the Director under Title 41, Chapter 33, Idaho Code, and will make them available to the Director, for so long as the affiliate continues to receive timely payment for services rendered. ()

026. ENTERPRISE RISK REPORT.

The ultimate controlling person of an insurer will file an enterprise risk report per Section 41-3809(12), Idaho Code, on Form F. ()

027. EXTRAORDINARY DIVIDENDS AND OTHER DISTRIBUTIONS.

01. Request for Approval. Requests to approve extraordinary dividends or other extraordinary distribution to shareholders will include the following: ()

- a. The amount of the proposed dividend; ()
- b. The date established for payment; ()
- c. Whether the dividend is in cash or other property. If property, a description thereof, its cost, its fair market value, and an explanation of the valuation basis; ()
- d. Calculations showing the proposed dividend is extraordinary, which includes: ()
 - i. The amounts, dates, and form of payment of all distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within twelve (12) consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought; ()
 - ii. Surplus as regards policyholders (total capital and surplus) as of the preceding December 31st; ()
 - iii. If the insurer is a life insurer, the net gain from operations for the twelve (12) months ending the preceding December 31st; and ()
 - iv. If the insurer is not a life insurer, the net income less net realized capital gains for the twelve (12) months ending the preceding December 31st. ()
- e. A balance sheet and income statement for the period since the last annual statement filed with the Director and the end of the month before the month in which the request for dividend approval is submitted; and ()
- f. The proposed distribution's effect on the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs. ()

02. Other Distributions. Subject to Section 41-3812, Idaho Code, registered insurers report to the Director all dividends and other shareholder distributions within fifteen (15) business days after the declaration thereof, including the information from Paragraph 027.01.d. ()

028. ADEQUACY OF SURPLUS.

Besides the factors in Section 41-3811, Idaho Code, the Director may consider other factors bearing on the insurer's financial condition. No one (1) factor is controlling. Comparing other insurers' surplus, the Director will consider the extent to which each factor varies among companies. When determining the quality and liquidity of an insurer's investments in subsidiaries the Director will include a consideration of the individual subsidiary and may discount or disallow its valuation as individual investments warrant. ()

029. -- 050. (RESERVED)

051. MHC APPLICATION - CONTENT - PROCESS.

01. Designating Application as Limited or Standard. Applications are designated as limited or standard. Filing a limited application does not preclude later filing a standard application. ()

- 02. Application Information.** Applications are filed in duplicate and will include: ()
- a.** Designation as limited or standard; ()
 - b.** A Plan of Reorganization; ()
 - c.** A plan for policyholder approval in accordance with the applicant's articles of incorporation and bylaws, with at least twenty (20) day notice to the policyholders; ()
 - d.** A copy of the MHC's proposed articles of incorporation and bylaws specifying all membership rights; ()
 - e.** The names, addresses and occupations of all corporate officers and members of the MHC's board of directors; ()
 - f.** Information sufficient to demonstrate that reorganization will not diminish the applicant's financial condition; ()
 - g.** A copy of the proposed articles of incorporation and bylaws for any insurance company subsidiary or intermediate holding company subsidiary; ()
 - h.** Form A; ()
 - i.** An application index; and ()
 - j.** Any other information requested by the Director. ()

052. HEARING NOTICE.

- 01. Scheduling.** A hearing will be held after the Director has received and reviewed the application. ()
- 02. Evidence Presented at Hearing.** The applicant will provide evidence that the application is complete, complies with Idaho law, and the requirements for reorganization have been fulfilled. ()
- 03. Notice of Hearing.** The Department will notify known interested parties about the hearing at least twenty (20) days before it occurs. ()

053. PLAN OF REORGANIZATION.

- 01. Plan of Reorganization.** The plan of reorganization or "Plan" needs to preserve the applicant's property, be fair and equitable to policyholders and protect their interests, and not diminish the applicant's financial condition. ()
- 02. Limited Application.** A limited application Plan will include: ()
- a.** Establishing a MHC with at least one (1) stock insurance company subsidiary or one (1) intermediary stock holding company with a stock insurance company subsidiary, the share of which is held exclusively by the mutual insurance holding company; ()
 - b.** Protection of existing policyholders' interests; ()
 - c.** Providing existing and future policyholder membership in the MHC; ()
 - d.** The number of policyholder members of the board of directors of the MHC; ()

e. Demonstrating that, if there are proceedings under Title 41, Chapter 33, Idaho Code, involving a stock insurance company subsidiary of the MHC, the assets of the MHC will be available to satisfy the policyholder obligations of the stock insurance company; ()

f. How any accumulation or prospective accumulation of earnings by the MHC in excess of that determined by the board of directors to be necessary will inure to the exclusive benefit of the MHC's member policyholders; ()

g. The nature and content of the annual report and financial statement sent to each member; and ()

h. Other matters the applicant deems appropriate. ()

03. Standard Application. A standard application Plan includes: ()

a. Establishing a MHC with at least one (1) stock insurance company subsidiary or one (1) wholly-owned intermediate stock holding company with a stock insurance company subsidiary, the shares of which are held exclusively by the wholly-owned intermediate holding company; ()

b. Protecting existing policyholders' interests; ()

c. Providing existing and future policyholder membership in the MHC; ()

d. The number of policyholder members on the MHC's board of directors; ()

e. Demonstrating that, if there are proceedings under Title 41, Chapter 33, Idaho Code, involving a stock insurance company subsidiary of the MHC, the assets of the MHC will be available to satisfy the policyholder obligations of the stock insurance company; ()

f. How any accumulation or prospective accumulation of earnings by the MHC excess of that determined by the MHC's board of directors to be necessary will inure to the exclusive benefit of the MHC's member policyholders; ()

g. The nature and content of the annual report and financial statement sent to each member; and ()

h. The plan for a stock offering per this rule; and ()

i. Other matters the applicant deems appropriate. ()

054. DUTIES OF THE DIRECTOR.

01. Jurisdiction. The Director retains jurisdiction over the MHC and any intermediate holding company subsidiaries with stock insurance company subsidiaries. ()

02. Approval or Denial of Application. The Director will, by order, approve, conditionally approve, or deny an application. ()

a. Modifications. The Director may prescribe modifications to the proposed Plan. Prescribed modifications are accepted by filing amendments to the proposed Plan with the Director within thirty (30) days after the Director's order is issued. The Application will be denied if the prescribed amendments are not filed. ()

b. Expiration. An approval or conditional approval of a Plan expires if the reorganization is not completed within one hundred eighty (180) days unless extended by the Director for good cause. ()

c. Revoking approval. The Director may revoke a Plan's approval or conditional approval if the Director finds the applicant has not complied with the Plan. The Director may compel the applicant to complete a

Plan unless the applicant has wholly abandoned the Plan consistent with the applicant's governance provisions. The Director retains jurisdiction over the applicant until the Plan is completed. ()

d. Completion notice. Upon completing the Plan, the applicant files a notice of completion with the Director. ()

055. REGULATION - COMPLIANCE.

01. Waiver of Compliance. No regulatory standards are waived during the pendency of a Plan application. ()

02. Merger or Acquisition. MHC mergers and acquisitions are subject to Director approval. If a MHC is to acquire more than fifty percent (50%) of a stock insurance company, then the applicant files a plan describing the insurer's policyholders' membership interests in the MHC. ()

03. Annual Financial Statement. A MHC will annually file a financial statement by June 1 including: ()

a. An income statement; ()

b. A balance sheet; ()

c. A cash flow statement; ()

d. The status of any closed block formed because of the Plan; ()

e. An asset investment plan; and ()

f. A statement disclosing any intention to pledge, borrow against, alienate, hypothecate, or otherwise encumber MHC assets. ()

04. Subsidiary Investment Obligations. At least fifty percent (50%) of the MHC's generally accepted accounting practices (GAAP) basis net worth will be invested in insurance company subsidiaries. ()

05. Distributions to Policyholders. Policy credits, dividends or other distributions to a MHC's policyholder members will be fair and equitable and are subject to Director approval and the public hearing process in Chapter 38, Title 41, Idaho Code. ()

056. REORGANIZATION OF MUTUAL INSURER WITH MUTUAL INSURANCE HOLDING COMPANY.

Domestic mutual insurance companies may merge their policyholders' interests into a MHC by filing a compliant joint application with the MHC. This also applies to foreign mutual insurance companies or a foreign health service corporation, which, if a domestic corporation, would be organized under Title 41, Chapter 28, Idaho Code. ()

057. MERGERS OF MUTUAL INSURANCE HOLDING COMPANIES.

Two (2) or more MHCs may merge by filing a compliant merger plan. ()

058. STOCK OFFERINGS.

01. Prior Approval. A stock offering by a MHC, or by any of its direct or indirect insurance company or intermediate holding company subsidiaries, is subject to the Director's prior approval through this section's application and hearing process. ()

02. Application for Stock Offering Contents. ()

a. A description of the stock the applicant would offer, and of all shareholder rights; ()

b. The total number of shares authorized to be issued, the estimated number requested to offer, and the intended date or range of dates for the offer; ()

c. A justification for a uniform planned offering price, or of the method by which the offering price will be determined; ()

d. The name or names of any underwriter, syndicate member or placement agent involved and the known names of each entity, person, or group of persons to whom the stock offering is to be made who will control at least five percent (5%) of the total outstanding class of shares, and the manner in which the offer is to be tendered. If the entity or person is a corporation or business organization, the name of each member of its board of directors or equivalent management will be provided with the name. Copies of Securities and Exchange Commission filings disclosing intended stock acquisitions will be included; ()

e. A description of stock subscription rights afforded to MHC members in conjunction with the stock offering; ()

f. A detailed description of all expenses to be incurred in the stock offering; ()

g. How funds raised by the stock offering will be used; and ()

h. Any other information the Director requests. ()

03. Prescribed Provisions. The stock offering plan will state: ()

a. Officers, directors, and insiders of the MHC and its direct or indirect subsidiaries and affiliates are restricted from purchasing or owning shares of the stock offering, or issuance of stock options to or for the benefit of such officers, directors and insiders, for at least six (6) months following the first public offering date and regularly trading of the stock. Officers, directors and insiders are not barred from exercising subscription rights accorded to members of the MHC, except that, pursuant to those rights, the officers, directors, and insiders of the MHC and its direct or indirect subsidiaries and affiliates cannot purchase or own, in the aggregate, more than five percent (5%) of the stock offering for at least six (6) months following the first date of the public offering and regular trading of the stock; ()

b. A majority of the members of the MHC's board of directors cannot be an interested person of the MHC or of an affiliated person of the MHC. The Director may waive this requirement for good cause; ()

c. The MHC will adopt articles of incorporation barring any waiver of dividends from stock subsidiaries except under conditions specified in the articles and after approval of the waiver by the MHC's board of directors and the Director; ()

d. After the initial stock offering by a direct or indirect insurance company or intermediate insurance company subsidiary of a MHC, the boards of directors of each such insurance company or intermediate holding company will include at least three (3) directors who are not interested persons of the MHC; and ()

e. The board of directors of the corporation offering stock need to establish, a pricing committee consisting exclusively of directors who are interested persons. The committee's responsibility is to evaluate and approve the price of any stock offering. ()

04. More Than One Class of Stock. An insurance company or intermediate insurance holding company subsidiary of a MHC may issue more than one (1) class of stock. At all times a majority of the voting stock will be held by the MHC or its subsidiary and, no class of common stock may have greater dividend or other rights than the class held by the MHC or its subsidiary. ()

05. Experts. The Director may hire experts to help review the application, at the applicant's expense. ()

06. Public Hearing. A public hearing may be held on any stock offering application. A stock offering

including an initial offering of stock is expressly subject to a public hearing. The applicant will provide a Director-approved hearing notice to MHC members at least twenty (20) days before the hearing. ()

07. Approval. The Director may approve the stock offering plan if: ()

a. The method for establishing the stock offering price is consistent with generally accepted market or industry practices for establishing stock offering prices; and ()

b. The offering will not unfairly impact the interests of MHC members. ()

08. Concurrent Filing with SEC. Filing a registration statement with the Securities and Exchange Commission before, or concurrently with, notice to the MHC members is permitted. ()

09. Subsequent Offerings of Publicly Traded Stock. ()

a. Notwithstanding Section 013, stock offerings, besides an initial stock offering, through which stock offered is regularly traded on the New York Stock Exchange, the American Stock Exchange, or another Director-approved exchange, or designated on the national association of securities dealers automated quotations - national market system (NASDAQ), is subject to this procedure: If a MHC or direct or indirect insurance company or intermediate insurance company subsidiary thereof intends to make a stock offering governed by this section, the entity will notify the Director, at least thirty (30) days before the offering, regarding: ()

i. The total number of shares intended to be offered; ()

ii. The intended date of sale; ()

iii. Evidence the stock is regularly traded on one of the public exchanges noted above; and ()

iv. A record of the stock's trading pace and volume during the prior fifty-two (52) weeks. ()

b. The Director may object to the offering within thirty (30) days after receiving the notice. Upon an objection, the procedures in Subsection 059.02 will be followed to determine approval. ()

10. Approval Expiration. A stock-offering approval under Subsections 059.06, 059.07, or 059.08 expires ninety (90) days after the approval date, except as provided by the Director's order. ()

11. Representation of Director's Approval. A prospectus, information, sales material or sales presentation by the applicant, or a representative, agent or affiliate of the applicant, will not represent that the Director's approval constitutes an endorsement of the price, price range, or any other information relating to the stock. ()

059. BANNED MHC - PRACTICES.

01. Borrowing Funds. Borrowing funds from the MHC, or its subsidiaries and affiliates, to finance the purchase of any part of a stock offering. ()

02. Paying Commissions. Paying commissions, "special fees" or other special payments or extraordinary compensation to officers, directors, or interested persons and affiliates, for arranging, promoting, aiding or assisting in reorganization or for arranging promoting, aiding assisting or participating in the structuring and placement of a stock offering. ()

03. Avoiding This Chapter. Transferring legal or beneficial ownership of stock to another person in avoidance of this chapter. ()

060. REGULATING HOLDING COMPANY SYSTEM.

All material transactions between subsidiaries and affiliates of the MHC need to be approved by a majority of the directors of the MHC as fair and reasonable, on terms and conditions not less favorable than those available from

unaffiliated third parties. ()

061. REPORTING STOCK OWNERSHIP AND TRANSACTIONS.

01. Acquiring Ownership Interest. Any director or officer of an MHC or its direct or indirect subsidiaries or affiliates, who directly or indirectly acquires the beneficial ownership of any security issued by any member of the MHC system will, within fifteen (15) days following the transaction, file a statement of the transaction in a format prescribed by the Director. ()

02. Filing SEC Forms. A MHC and its direct or indirect subsidiaries and affiliates, will file with the Director copies of Form 3, Form 4 and Schedule 13D, or any equivalent filings, made under the Securities and Exchange Act of 1934, as amended, within fifteen (15) days of receipt thereof. ()

062. -- 999. (RESERVED)

IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

18.07.02 – RESERVE LIABILITIES AND MINIMUM VALUATIONS FOR ANNUITIES AND PURE ENDOWMENT CONTRACTS

DOCKET NO. 18-0702-2201 (ZBR CHAPTER REWRITE)

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 2023 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 Sections 41-211 and 41-612, 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 rule recognizes mortality table for use in determining minimum standard valuations for annuity and pure endowment contracts. This rulemaking clarifies language, removes duplicative language, and directs to the Department website for certain information.

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 July 6, 2022, Idaho Administrative Bulletin, [Vol. 22-7, pages 143 to 146](#).

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: None.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Wes Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

DATED this October 6, 2022.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID, 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

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 Sections 41-211 and 41-612, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

<p>Tuesday, July 26, 2022 2:00 p.m. to 3:30 p.m. (MT)</p>
<p><i>In-person participation is available at:</i> Department of Insurance 700 W State St, 3rd Floor Conference Room A Boise, Idaho 83702</p> <p><i>Phone or virtual participation via Webex is available at:</i> Join WebEx Meeting Meeting Number (Access Code): 2451 825 4219 Meeting Password: fN4m3AqFSr3</p> <p><i>Join by phone at: 1-720-650-7664</i></p>

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this rule recognizes mortality table for use in determining minimum standard valuations for annuity and pure endowment contracts. This rulemaking clarifies language, removes duplicative language, and moves information to the Department website.

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 as a result of this rulemaking: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2022 Idaho Administrative Bulletin, [Vol. 22-04, pages 37-38](#), under Docket No. 18-ZBRR-2201.

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 Weston Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

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 July 27, 2022.

DATED this June 3, 2022.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 18-0702-2201

18.07.02 – RESERVE LIABILITIES AND MINIMUM VALUATIONS FOR ANNUITIES AND PURE ENDOWMENT CONTRACTS

000. LEGAL AUTHORITY.

Title 41, Chapters 2 and 6, Sections 41-211 and 41-612, Idaho Code. ()

001. SCOPE.

To determine minimum standard valuation for annuity and pure endowment contracts. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. 1983 Table ‘a’. The mortality table developed by the Society of Actuaries (SOA) Committee for Individual Annuity Valuation in 1981 and in June 1982 by the National Association of Insurance Commissioners (NAIC). ()

02. 1983 GAM Table. The mortality table developed by the SOA Committee on Annuities and adopted as a recognized mortality table for annuities in December 1983 by the NAIC. ()

03. 1994 GAR Table. The mortality table developed by the (SOA) Group Annuity Valuation Table Task Force and shown on pages 866-867 of Volume 47 of the Transactions of Society of Actuaries 1995. ()

04. 2012 Individual Annuity Mortality Period Life (2012 IAM Period) Table. The Period Table loaded mortality rates for calendar year 2012. This table contains rates, q_x^{2012} , developed by the (SOA) Committee on Life Insurance Research. ()

05. 2012 Individual Annuity Reserving (2012 IAR) Table. The generational mortality table developed by the (SOA) Committee on Life Insurance Research and containing rates, q_x^{2012+n} derived from a combination of the 2012 IAM Period Table and Scale G2, using the method Section 014. ()

06. Annuity 2000 Mortality Table. The mortality table developed by the (SOA) Committee on Life Insurance Research. ()

07. Generational Mortality Table. A mortality table with mortality rates that decrease for a given age from one year to the next based on a combination of a Period Table and a projection scale containing mortality-improvement rates. ()

08. Period Table. A table of mortality rates applying to a given calendar year (the Period). ()

09. Projection Scale G2 (Scale G2). A table of annual rates, $G2_x$, of mortality improvement by age for

projecting future mortality rates beyond calendar year 2012. This table was developed by the (SOA) Committee on Life Insurance Research. ()

011. INDIVIDUAL ANNUITY OR PURE ENDOWMENT CONTRACTS.

01. Individual Annuity Mortality Table. Except as stated in Subsections 011.02, the 1983 Table ‘a’ is approved as an individual annuity mortality table for valuation, and, a company may use it to determine the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1982. ()

02. Minimum Standard of Valuation. Except as stated in Subsection 011.03, either the 1983 Table ‘a’ or the Annuity 2000 Mortality Table is used to determine the minimum standard of valuation for an individual annuity or pure endowment contract issued on or after January 1, 1987. ()

03. The Annuity 2000 Mortality Table. Except as stated in Subsection 011.04, the Annuity 2000 Mortality Table is used to determine the minimum standard of valuation for an individual annuity or pure endowment contract issued on or after March 29, 2012. ()

04. The 2012 IAR Mortality Table. Except as stated in Subsection 011.05, the 2012 IAR Mortality Table is used to determine the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2015. ()

05. The 1983 Table ‘a.’ The 1983 Table ‘a’ without projection is used to determine the minimum standard of valuation for an individual annuity or pure endowment contract issued on or after March 29, 2012, solely when the contract is based on life contingencies and issued to fund periodic benefits arising from: ()

- a. Settlements of claims pertaining to court settlements or out of court settlements from tort actions; ()
- b. Settlements involving similar actions like workers’ compensation claims; or ()
- c. Settlements of long-term disability claims where a temporary or life annuity is used in lieu of continuing disability payments. ()

012. GROUP ANNUITY OR PURE ENDOWMENT CONTRACTS.

01. Group Annuity Mortality Tables. Except as stated in Subsections 012.02, the 1983 GAM Table, the 1983 Table ‘a’ and the 1994 GAR Table are approved as group annuity mortality tables for valuation and, at the option of the company, any one (1) of these tables may be used for purposes of valuation for any annuity or pure endowment purchased on or after July 1, 1982, under a group annuity or pure endowment contract. ()

02. Minimum Standard of Valuation. Except as stated in Subsection 012.03, either the 1983 GAM Table or the 1994 GAR Table is used to determine the minimum standard of valuation for an annuity or pure endowment purchased on or after January 1, 1987, under a group annuity or pure endowment contract. ()

03. 1994 GAR Table. The 1994 GAR Table is used to determine the minimum standard of valuation for an annuity or pure endowment purchased on or after March 29, 2012, under a group annuity or pure endowment contract. ()

013. -- 999. (RESERVED)

IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

18.07.03 – VALUATION OF LIFE INSURANCE POLICIES INCLUDING THE USE OF SELECT MORTALITY FACTORS

DOCKET NO. 18-0703-2201 (ZBR CHAPTER REWRITE)

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 2023 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 Sections 41-211 and 41-612, 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 rule provides tables of select mortality factors and rules for their use; and minimum standard rules for valuations of plans with nonlevel premiums or benefits and for valuation of plans with secondary guarantees. This rulemaking clarifies language and removes duplicative language.

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 July 6, 2022, Idaho Administrative Bulletin, [Vol. 22-7, pages 147 to 157](#).

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: None.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Wes Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

DATED this October 6, 2022.

Dean L. Cameron, Director
Idaho Department of Insurance
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P.O. Box 83720
Boise, ID, 83720-0043
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Fax: (208) 334-4398

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 Sections 41-211 and 41-612, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

<p>Tuesday, July 26, 2022 2:00 p.m. to 3:30 p.m. (MT)</p>
<p><i>In-person participation is available at:</i> Department of Insurance 700 W State St, 3rd Floor Conference Room A Boise, Idaho 83702</p>
<p><i>Phone or virtual participation via Webex is available at:</i> Join WebEx Meeting Meeting Number (Access Code): 2451 825 4219 Meeting Password: fN4m3AqFSr3</p>
<p><i>Join by phone at: 1-720-650-7664</i></p>

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this rule is to provide: tables of select mortality factors and rules for their use; and minimum standard rules for valuations of plans with nonlevel premiums or benefits and for valuation of plans with secondary guarantees. This rulemaking clarifies language and removes duplicative language.

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 as a result of this rulemaking: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2022 Idaho Administrative Bulletin, [Vol. 22-04, pages 37-38](#), under Docket No. 18-ZBRR-2201.

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: Insurance companies must calculate the value of the benefits they sell under specific conditions, in order to regulate their solvency. The incorporation of the tables is necessary to set those solvency standards and for Idaho to retain its accreditation.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Weston Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

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 July 27, 2022.

DATED this June 3, 2022.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 18-0703-2201

**18.07.03 – VALUATION OF LIFE INSURANCE POLICIES INCLUDING
THE USE OF SELECT MORTALITY FACTORS**

000. LEGAL AUTHORITY.

Title 41, Chapters 2 and 6, Sections 41-211 and 612, Idaho Code. ()

001. SCOPE.

01. Scope. Provides Tables of select mortality factors and minimum standards for plan valuations with: ()

a. Nonlevel premiums or benefits; or ()

b. Secondary guarantees. ()

02. Method. The method for calculating basic reserves defined herein will constitute the commissioners' reserve valuation method for applicable policies. ()

03. Applicability. This chapter applies to all life insurance policies, with or without nonforfeiture values, issued on or after March 30, 2001, subject to these exceptions and conditions. ()

a. Exceptions. This chapter does not apply to: ()

i. An individual life insurance policy issued on or after March 30, 2001, if the policy is issued under, and because of, the exercise of a reentry provision in the original life insurance policy of the same or greater face amount, issued before March 30, 2001, that guarantees the new policy's premium rates. This chapter also does not apply to later policies issued because of the exercise of such a provision, or a derivation of the provision, in the new policy. ()

ii. A universal life policy that meets all the following requirements: ()

(1) Secondary guarantee period, if any, is five (5) years or less; ()

(2) Specified premium for the secondary guarantee period is at least the net level reserve premium for the secondary guarantee period based on the CSO valuation tables, as defined, and the applicable valuation interest rate; and ()

(3) The initial surrender charge is at least one hundred percent (100%) of the first year annualized

specified premium for the secondary guarantee period. ()

iii. A variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts. ()

iv. A variable universal life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts. ()

v. A group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums needed to continue coverage in force for a period beyond one (1) year. ()

b. Conditions: ()

i. The minimum valuation standard for policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits (other than universal life policies), or both, will be calculated per Section 012. ()

ii. The minimum valuation standard for flexible premium and fixed premium universal life insurance policies, which contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period, will be calculated per Section 013. ()

002. INCORPORATION BY REFERENCE.

The tables of select mortality factors are incorporated by reference the Appendix to NAIC Model 830, published October 2009 and available on the Department's website, and are the bases to which the respective percentage of Paragraphs 011.01.b., 011.02.b., and 011.02.c. are applied. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Basic Reserves. Reserves calculated per Section 41-612(5), Idaho Code. ()

02. Contract Segmentation Method. Method of dividing the period from issue to mandatory expiration of a policy into successive segments, where each segment's length is the period from the end of the prior segment (from policy inception, for the first segment) to the end of the latest policy year as determined below. All calculations are made using the 1980 CSO Valuation Tables, and, if elected, the optional minimum mortality standard for deficiency reserves set forth in Subsection 011.02. ()

03. Deficiency Reserves. Excess, if greater than zero (0), of ()

a. Minimum reserves calculated per Section 41-612(10), Idaho Code, over ()

b. Basic reserves. ()

04. Guaranteed Gross Premiums. Life insurance policy premiums that are guaranteed and determined at issue. ()

05. Maximum Valuation Interest Rates. Interest rates defined in Section 41-612(4b), Idaho Code (Computation of Minimum Standard by Calendar Year of Issue), used to determine the minimum standard for valuating life insurance policies. ()

06. 1980 CSO Valuation Tables. Commissioners' 1980 Standard Ordinary Mortality Table (1980 CSO Table) without "ten year select factors," and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983. ()

07. Scheduled Gross Premium. Smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in Paragraph 013.01.c., if any, or else the minimum premium described in Paragraph 013.01.d.

- ()
- 08. Segmented Reserves.** ()
- a.** Reserves calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the policy's mandatory expiration, where the net premiums in each segment are a uniform percentage of the respective guaranteed gross premiums within the segment. The uniform percentage for each segment is such that, at the start of the segment, the present value of the net premiums within the segment equals: ()
- i. The present value of the death benefits within the segment, plus ()
- ii. The present value of any unusual, guaranteed cash value (see Subsection 012.04) occurring at the end of the segment, less ()
- iii. Any unusual guaranteed cash value occurring at the start of the segment, plus ()
- iv. For the first segment only, the excess of the Item one (1) over Item two (2), as follows: ()
- (1) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one (1) per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. But the net level annual premium will not exceed the net level annual premium on the nineteen (19) year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one (1) year higher than the age at issue of the policy. ()
- (2) A net one (1) year term premium for the benefits provided for in the first policy year. ()
- b.** Each segment's length is determined by the "contract segmentation method." ()
- c.** The interest rates in a policy's present value calculations cannot exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of the policy's segments. ()
- d.** For both basic reserves and deficiency reserves computed by the contract segmentation method, present values will include future benefits and net premiums in the current segment and in all subsequent segments. ()
- 09. Tabular Cost of Insurance.** The net single premium at the start of a policy year for one (1) year term insurance in the amount of the guaranteed death benefit in that policy year. ()
- 10. Ten Year Select Factors.** The factors adopted with the 1980 amendments to the NAIC Standard Valuation Law. ()
- 11. Unitary Reserves.** ()
- a.** The present value of all future guaranteed benefits less the present value of all future modified net premiums, where: ()
- i. Guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and ()
- ii. Modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of Item one (1) over Item two (2), as follows: ()
- (1) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one (1) per year

payable on the first and each subsequent anniversary of the policy on which a premium falls due. But the net level annual premium will not exceed the net level annual premium on the nineteen (19) year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one (1) year higher than the age at issue of the policy. ()

(2) A net one (1) year term premium for the benefits provided for in the first policy year. ()

b. The interest rates used in the present value calculations for any policy will not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy. ()

12. Universal Life Insurance Policy. Any individual life insurance policy for which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality or expense charges are made to the policy. ()

011. GENERAL CALCULATION REQUIREMENTS FOR BASIC RESERVES AND PREMIUM DEFICIENCY RESERVES.

01. Basic Reserves. At the company's election for any one (1) or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors. If select mortality factors are elected, they may be: ()

a. The "ten year select factors"; ()

b. The select mortality factors in the tables referenced in Section 002. ()

02. Deficiency Reserves. Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero (0), of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the company's election, for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used to determine quantity A may be based on the 1980 CSO valuation tables with select mortality factors. If select mortality factors are elected, they may be one (1) of: ()

a. The "ten year select factors"; ()

b. The select mortality factors in the tables as referenced in Section 002; ()

c. For durations in the first segment, X percent of the select mortality factors in the tables as referenced in Section 002, subject to: ()

i. X may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience; ()

ii. X is such that, when using the valuation interest rate used for basic reserves, Item one (1) at least equals Item two (2); ()

(1) The actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of X; ()

(2) The actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date; ()

iii. X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of the first five (5) years after the valuation date; ()

iv. The appointed actuary will increase X at any valuation date where it is necessary to continue to meet all the requirements of Paragraph 011.02.c.; ()

v. The appointed actuary may decrease X at any valuation date if X continues to meet all requirements of Paragraph 011.02.c.; and ()

vi. The appointed actuary will specifically consider the adverse effect on expected mortality and lapsation of any anticipated or actual increase in gross premiums. ()

vii. If X is less than one hundred percent (100%) at any duration for any policy, the following requirements are to be met: ()

(1) The appointed actuary will annually prepare an actuarial opinion and memorandum for the company in conformance with the requirements of IDAPA 18.07.09, Section 022; ()

(2) The appointed actuary will disclose, in the Regulatory Asset Adequacy Issues Summary, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one (1) or more interim periods; and ()

(3) The appointed actuary will annually opine, for all policies subject to this chapter, on whether the mortality rates resulting from applying X meet the requirements of Paragraph 011.02.c. This opinion will be supported by an actuarial report, subject to appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries. The X factors will reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience. ()

03. Applicability. Subsection 011.03 applies to both basic reserves and deficiency reserves. Any set of select mortality factors may be used only for the first segment. But if the first segment is less than ten (10) years, the appropriate “ten year select factors” may be used thereafter through the tenth policy year from the date of issue. ()

04. Gross Premiums. In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums, even if excluded from the actual calculation of basic reserves. ()

05. Changes in Guarantees. Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than one (1) year after the date of the change will be the greatest of the following: ()

a. Reserves calculated ignoring the guarantee; ()

b. Reserves assuming the guarantee was made at issue; and ()

c. Reserves assuming that the policy was issued on the date of the guarantee. ()

06. Reserve Adequacy. The Director may require that the company document the extent of the adequacy of reserves for specified blocks, including but not limited to policies issued prior to the effective date of this chapter. This documentation may include a demonstration of the extent to which aggregation with other non-specified blocks of business is relied on in forming the appointed actuary opinion pursuant to and consistent with the requirements of the Actuarial and Memorandum Rule, IDAPA 18.07.09, Section 022. ()

012. CALCULATING MINIMUM VALUATION STANDARD FOR POLICIES WITH GUARANTEED NONLEVEL GROSS PREMIUMS OR GUARANTEED NONLEVEL BENEFITS (BESIDES UNIVERSAL LIFE POLICIES).

01. Basic Reserves. Basic reserves are calculated as the greater of the segmented reserves and the

unitary reserves. Both the segmented reserves and the unitary reserves for any policy will use the same valuation mortality table and selection factors. An insurer may make either of these adjustments when calculating segmented reserves and net premiums: ()

a. Treat the unitary reserve, if greater than zero (0), applicable at the end of each segment as a pure endowment and subtract the unitary reserve, if greater than zero (0), applicable at the start of each segment from the present value of guaranteed life insurance and endowment benefits for each segment; or ()

b. Treat the guaranteed cash surrender value, if greater than zero (0), applicable at the end of each segment as a pure endowment; and subtract the guaranteed cash surrender value, if greater than zero (0), applicable at the start of each segment from the present value of guaranteed life insurance and endowment benefits for each segment. ()

02. Deficiency Reserves. ()

a. The deficiency reserve at any duration will be calculated: ()

i. On a unitary basis if the corresponding basic reserve determined by Subsection 012.01 is unitary; ()

ii. On a segmented basis if the corresponding basic reserve determined by Subsection 012.01 is segmented; or ()

iii. On the segmented basis if the corresponding basic reserve determined by Subsection 012.01 is equal to both the segmented reserve and the unitary reserve. ()

b. Subsection 012.02 applies to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality (specified in Subsection 011.02 and rate of interest). ()

c. Deficiency reserves, if any, are calculated for each policy as the excess if more than zero (0), for the current and all remaining periods, of the quantity A over the basic reserve, where A is obtained as indicated in Subsection 011.02. ()

d. For deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves. ()

03. Minimum Value. Basic reserves will at least equal the tabular cost of insurance for the balance of the policy year, if mean reserves are used. Basic reserves will at least equal the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy anniversary, if mid-terminal reserves are used. The tabular cost of insurance will use the same valuation mortality table and interest rates as that used to calculate the segmented reserves. But if select mortality factors are used, they will be the “ten year select factors”. Total reserves (including basic reserves, deficiency reserves and any reserves held for supplemental benefits that would expire at contract termination) never may be less than the amount that the policyowner would receive (including the cash surrender value of the supplemental benefits, if any, referred to above), exclusive of any deduction for policy loans, when the policy terminates. ()

04. Unusual Pattern of Guaranteed Cash Surrender Values. ()

a. For any policy with an unusual pattern of guaranteed cash surrender values, the reserves held before the first unusual guaranteed cash surrender value will at least equal the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an n year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where n is the number of years from the date of issue to the date the unusual cash surrender value is scheduled. ()

b. The reserves held after any unusual guaranteed cash surrender value will at least equal the reserves calculated by treating the policy as an n year policy providing term insurance plus a pure endowment equal to the next

unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where: ()

i. n is the number of years from the date of the last unusual guaranteed cash surrender value before the valuation date to the earlier of: ()

(1) The date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or ()

(2) The mandatory expiration date of the policy; and ()

ii. The net premium for a given year during the n year period equals the product of the net to gross ratio and the respective gross premium; and ()

iii. The net to gross ratio equals Item One (1) divided by Item Two (2) as follows: ()

(1) The present value, at the start of the n year period, of death benefits payable during the n year period plus the present value, at the start of the n year period, of the next unusual guaranteed cash surrender value, if any, minus the amount of the last unusual guaranteed cash surrender value, if any, scheduled at the start of the n year period. ()

(2) The present value, at the start of the n year period, of the scheduled gross premiums payable during the n year period. ()

c. For Subsection 012.04, a policy has an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of: ()

i. One hundred ten percent (110%) of the scheduled gross premium for that year; ()

ii. One hundred ten percent (110%) of one (1) year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and ()

iii. Five percent (5%) of the first policy year surrender charge, if any. ()

05. Optional Exemption for Yearly Renewable Term (YRT) Reinsurance. A company may opt to use this approach for reserves on YRT reinsurance: ()

a. Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year; ()

b. Basic reserves will at least equal the tabular cost of insurance for the appropriate period, as defined in Subsection 012.03; ()

c. Deficiency reserves. ()

i. For each policy year, calculate the excess, if greater than zero (0), of the valuation net premium over the respective maximum guaranteed gross premium. ()

ii. Deficiency reserves will at least equal the sum of the present values, at the date of valuation, of the excesses determined in accordance with Subparagraph 012.05.c.i.; ()

d. For Subsection 012.05, the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without "ten year select factors"; ()

e. A reinsurance agreement is YRT reinsurance under Subsection 012.05 if only the mortality risk is

reinsured; and ()

f. If the assuming company chooses this optional exemption, the ceding company's reinsurance reserve credit will be limited to the amount of reserve the assuming company holds for the affected policies. ()

06. Optional Exemption for Attained-Age-Based Yearly Renewable Term Life Insurance Policies. A company may opt to use this approach for reserves for attained-age-based YRT life insurance policies: ()

a. Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year. ()

b. Basic reserves will at least equal to the tabular cost of insurance for the appropriate period, as defined in Subsection 012.03. ()

c. Deficiency reserves: ()

i. For each policy year, calculate the excess, if greater than zero (0), of the valuation net premium over the respective maximum guaranteed gross premium. ()

ii. Deficiency reserves at least equal to the sum of the present values, at the date of valuation, of the excesses determined in accordance with Subparagraph 012.06.c.i. ()

d. For Subsection 012.06, the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without "ten year select factors." ()

e. A policy is an attained-age-based YRT life insurance policy, under Subsection 012.06, if: ()

i. The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are based on the attained age of the insured such that the rate for any given policy at a given attained age of the insured is independent of the year the policy was issued; and ()

ii. The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are the same as the premium rates for policies covering all insureds of the same sex, risk class, plan of insurance and attained age. ()

f. For policies that become attained-age-based YRT policies after an initial coverage period, the approach of Subsection 012.06 may be used after the initial period if: ()

i. The initial period is constant for all insureds of the same sex, risk class and plan of insurance; or ()

ii. The initial period runs to a common attained age for all insureds of the same sex, risk class, and plan of insurance; and ()

iii. After the initial period, the policy meets the conditions of Paragraph 012.06.e.; and ()

g. If this election is made, this approach will be applied to determine reserves for all attained-age-based YRT life insurance policies issued on or after this chapter's effective date. ()

07. Exemption from Unitary Reserves for Certain n-Year Renewable Term Life Insurance Policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met: ()

a. The policy consists of a series of n -year periods, including the first period and all renewal periods, where n is the same for each period, except that for the final renewal period, n may be truncated or extended to reach the expiry age, provided that this final renewal period is less than ten (10) years and less than twice the size of the earlier n -year periods, and for each period, the premium rates on both the initial current premium scale and the

guaranteed maximum premium scale are level; ()

b. The guaranteed gross premiums in all n-year periods are not less than the corresponding net premiums based on the 1980 CSO Table with or without the “ten year select factors;” and ()

c. There are no cash surrender values in any policy year. ()

08. Exemption From Unitary Reserves for Certain Juvenile Policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if these conditions are met, based on the initial current premium scale at issue: ()

a. At issue, the insured is age twenty-four (24) or younger; ()

b. Until the insured reaches the end of the juvenile period, which will occur at or before age twenty-five (25), the gross premiums and death benefits are level, and there are no cash surrender values; and ()

c. After the end of the juvenile period, gross premiums are level for the remainder of the premium paying period, and death benefits are level for the remainder of the life of the policy. ()

013. CALCULATING MINIMUM VALUATION STANDARD FOR FLEXIBLE PREMIUM AND FIXED PREMIUM UNIVERSAL LIFE INSURANCE POLICIES THAT CONTAIN PROVISIONS RESULTING IN THE ABILITY OF A POLICY OWNER TO KEEP A POLICY IN FORCE OVER A SECONDARY GUARANTEE PERIOD.

01. General. ()

a. Policies with a secondary guarantee include: ()

i. A policy with a guarantee that the policy will remain in force at the original schedule of benefits, subject only to paying specified premiums; ()

ii. A policy in which the minimum premium at any duration is less than the corresponding one (1) year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables with or without “ten year select factors;” or ()

iii. A policy with any combination of Subparagraphs 013.01.a.i. and 013.01.a.ii. ()

b. A secondary guarantee period is the period for which the policy is guaranteed to remain in force subject only to a secondary guarantee. When a policy contains more than one secondary guarantee, the minimum reserve will be the greatest of the respective minimum reserves at that valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees. Secondary guarantees that the insurer unilaterally changes after issue will be considered to have been made at issue. Reserves described in Subsections 013.02 and 013.03 below will be recalculated from issue to reflect these changes. ()

c. Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits, but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum interest credits were made and any applicable surrender charges were assessed. ()

d. For Section 013, the minimum premium for any policy year is the premium that, when paid into a policy with a zero (0) account value at the start of the policy year, produces a zero (0) account value at the end of the policy year. The minimum premium calculation will use the policy cost factors (including mortality charges, loads and expense charges) and the interest crediting rate, which are all guaranteed at issue. ()

e. The one (1) year valuation premium means the net one (1) year premium based on the original schedule of benefits for a given policy year. The one (1) year valuation premiums for all policy years are calculated at issue. The select mortality factors defined in Paragraphs 011.02.b., 011.02.c., and 011.02.d. cannot be used to

calculate the one (1) year valuation premiums. ()

f. The one (1) year valuation premium should reflect the frequency of fund processing, and the distribution of deaths assumption employed in the calculation of the monthly mortality charges to the fund. ()

02. Basic Reserves for Secondary Guarantees. Basic reserves for secondary guarantees will be the segmented reserves for the secondary guarantee period. In calculating the segments and the segmented reserves, the gross premiums will be set equal to the specified premiums, if any, or otherwise to the minimum premiums, that keep the policy in force and the segments will be determined according to the “contract segmentation method.” ()

03. Deficiency Reserves for Secondary Guarantees. Any deficiency reserves for secondary guarantees will be calculated for the secondary guarantee period as described in Subsection 012.02 with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force. ()

04. Minimum Reserves. The minimum reserves during the secondary guarantee period are the greater of: ()

a. The basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or ()

b. The minimum reserves prescribed by other rules or rules governing universal life plans. ()

014. -- 999. (RESERVED)

IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE
18.07.08 – PROPERTY AND CASUALTY ACTUARIAL OPINION RULE
DOCKET NO. 18-0708-2201 (ZBR CHAPTER REWRITE)
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 2023 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 41-211, 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 rule provides the Director with additional means to monitor insurer's loss reserves in accordance with Section 41-610, Idaho Code. This rulemaking clarifies language and removes duplicative language.

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 July 6, 2022 Idaho Administrative Bulletin, [Vol. 22-7, pages 158 to 160](#).

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: None.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Wes Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

DATED this October 6, 2022.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID, 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

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 Sections 41-211, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

<p>Tuesday, July 26, 2022 2:00 p.m. to 3:30 p.m. (MT)</p>
<p><i>In-person participation is available at:</i> Department of Insurance 700 W State St, 3rd Floor Conference Room A Boise, Idaho 83702</p>
<p><i>Phone or virtual participation via Webex is available at:</i> Join WebEx Meeting Meeting Number (Access Code): 2451 825 4219 Meeting Password: fN4m3AqFSr3</p>
<p><i>Join by phone at: 1-720-650-7664</i></p>

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this rule provides the Director with additional means to monitor insurer's loss reserves in accordance with Section 41-610, Idaho code. This rulemaking clarifies language and removes duplicative language.

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 as a result of this rulemaking: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2022 Idaho Administrative Bulletin, [Vol. 22-04, pages 37-38](#), under Docket No. 18-ZBRR-2201.

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 Weston Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

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 July 27, 2022.

DATED this June 3, 2022.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 18-0708-2201

18.07.08 – PROPERTY AND CASUALTY ACTUARIAL OPINION RULE

000. LEGAL AUTHORITY.

Title 41, Chapter 2, Idaho Code. ()

001. SCOPE.

This rule applies to annual statements filed by property and casualty companies doing business in Idaho, and provides the Director the means to monitor an insurer's loss reserves per Section 41-610, Idaho Code. ()

002. -- 020. (RESERVED)

021. ACTUARIAL OPINION OF RESERVES AND SUPPORTING DOCUMENTATION.

01. Statement of Actuarial Opinion, Opinion Summary and Actuarial Report and Work Papers. ()

a. A property and casualty insurance company doing business in Idaho, unless exempted by the domiciliary commissioner, will annually file an Appointed Actuary's "Statement of Actuarial Opinion," per NAIC Property and Casualty Annual Statement Instructions. ()

b. Every property and casualty insurance company domiciled in Idaho filing a Statement of Actuarial Opinion will, it must also file an Actuarial Opinion Summary, written by the company's Appointed Actuary, per the NAIC Property and Casualty Annual Statement Instructions. ()

c. A company licensed, but not domiciled, in Idaho will file the Actuarial Opinion Summary upon request. ()

d. An Actuarial Report and work papers as prescribed by the NAIC Property and Casualty Annual Statement Instructions will support each Actuarial Opinion. ()

e. If the company fails to file a supporting Actuarial Report or work papers at the Director's request, or the Director determines the Actuarial Report or work papers do not comply with the NAIC Property and Casualty Annual Statement Instructions or are otherwise unacceptable, the Director may hire a qualified actuary, at company expense, to review the Actuarial Opinion, and prepare the supporting Actuarial Report or work papers. ()

022. CONFIDENTIALITY.

01. The Statement of Actuarial Opinion. Will be filed with the Annual Statement per NAIC Property and Casualty Annual Statement Instructions and be a public record. ()

02. Actuarial Report. ()

a. The Actuarial Report, work papers or Actuarial Opinion Summary in support of the Actuarial Opinion, and any other records the company provides to the Director in connection thereto, are exempt from public disclosure under Section 74-107(5), Idaho Code. ()

b. This provision does not limit the Director's authority to release these records to the Actuarial Board for Counseling and Discipline (ABCD) so long as they are needed for professional disciplinary proceedings and the ABCD establishes procedures satisfactory to the Director regarding disclosing the records; nor the Director's authority to use the records to further the Director's regulatory or legal actions. ()

03. Waiver. Disclosing records to the Director waives no privilege or claim of confidentiality in the records. ()

023. -- 999. (RESERVED)

IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE
18.07.09 – LIFE AND HEALTH ACTUARIAL OPINION AND MEMORANDUM RULE
DOCKET NO. 18-0709-2201 (ZBR CHAPTER REWRITE)
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 2023 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 41-211, 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 rule allows the appointed actuary to use professional judgement and opinion in asset analysis and supporting communication. Also, the rule provides the Director with authority to specify methods and assumptions of actuarial analysis in order to render adequacy of reserves and related items. This rulemaking clarifies language and removes duplicative language.

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 July 6, 2022 Idaho Administrative Bulletin, [Vol. 22-7, pages 161 to 169](#).

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: None.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Wes Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

DATED this October 6, 2022.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID, 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

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 Sections 41-211, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

<p>Tuesday, July 26, 2022 2:00 p.m. to 3:30 p.m. (MT)</p>
<p><i>In-person participation is available at:</i> Department of Insurance 700 W State St, 3rd Floor Conference Room A Boise, Idaho 83702</p> <p><i>Phone or virtual participation via Webex is available at:</i> Join WebEx Meeting Meeting Number (Access Code): 2451 825 4219 Meeting Password: fN4m3AqFSr3</p> <p><i>Join by phone at: 1-720-650-7664</i></p>

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this rule allows the appointed actuary to use professional judgement and opinion in asset analysis and supporting communication. Also, the rule provides the Director with authority to specify methods and assumptions of actuarial analysis in order to render adequacy of reserves and related items. This rulemaking clarifies language and removes duplicative language.

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 as a result of this rulemaking: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2022 Idaho Administrative Bulletin, Vol. 22-04, pages 37-38, under Docket No. 18-ZBRR-2201.

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 Weston Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

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 July 27, 2022.

DATED this June 3, 2022.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 18-0709-2201

18.07.09 – LIFE AND HEALTH ACTUARIAL OPINION AND MEMORANDUM RULE

000. LEGAL AUTHORITY.

Title 41, Chapter 2, Idaho Code. ()

001. SCOPE.

01. Application of Rule. This rule applies to all life insurance companies and fraternal benefit societies doing business in Idaho and to all life insurance companies and fraternal benefit societies that are authorized to reinsure life insurance, annuities or accident and health insurance business in Idaho. This regulation will be applied to allow the appointed actuary to use their professional judgment in performing the asset analysis and developing the actuarial opinion and supporting memoranda, consistent with actuarial standards of practice. But the Director may specify methods of actuarial analysis and actuarial assumptions that the Director deems necessary for an acceptable opinion to be rendered on the adequacy of reserves and related items. ()

02. Application to All Annual Statements. This rule applies to all annual statements filed with the Director. A statement of opinion on the adequacy of reserves and related actuarial items based on an asset adequacy analysis per Section 022, and a supporting memorandum per Section 023, will be needed each year. ()

03. Purpose. This rule prescribes: ()

a. Guidelines and standards for statements of actuarial opinion which are to be submitted per Section 41-612(12), Idaho Code, and for supporting memoranda; ()

b. Rules for appointing an appointed actuary; and ()

c. Guidelines on the meaning of adequacy of reserves. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Actuarial Opinion. An Appointed Actuary's opinion on reserve adequacy and related actuarial items based on an asset adequacy test per Section 022 and presently accepted actuarial standards. ()

02. Actuarial Standards Board. The board established by the American Academy of Actuaries to develop standards of actuarial practice. ()

03. Asset Adequacy Analysis. An analysis that meets the standards and requirements in Subsection 021.04. ()

04. Company. A life insurance company, fraternal benefit society or reinsurer subject to this rule. ()

011. -- 020. (RESERVED)

021. GENERAL REQUIREMENTS.

01. Submitting Statement of Actuarial Opinion. ()

a. For each year, starting with the year in which this rule takes effect, the annual statement's first page will include or attach the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion on reserves and related actuarial items held in support of policies and contracts, per Section 022. ()

b. Upon written request by the company, the Director may grant an extension to submit the statement of actuarial opinion. ()

02. Qualified Actuary. An individual who: ()

a. Is a member in good standing of the American Academy of Actuaries; and ()

b. Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements per the American Academy of Actuaries qualification standards; and ()

c. Is familiar with the valuation requirements applicable to life and health insurance companies; and ()

d. Has not been found by the Director (or if so found has later been reinstated as a qualified actuary), after appropriate notice and hearing, to have; ()

i. Violated any provision of, or any obligation imposed by any law in the course of their dealings as a qualified actuary; or ()

ii. Been found guilty of fraudulent or dishonest practices; or ()

iii. Demonstrated incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary; or ()

iv. Filed with the Director during the past five (5) years, pursuant to this rule, an actuarial opinion or memorandum that the Director rejected because it violated this rule, including standards set by the Actuarial Standards Board; or ()

v. Resigned, or been removed as an actuary, within the past five (5) years because of acts or omissions indicated in any adverse report on examination or as a result not adhering to generally accepted actuarial standards; and ()

e. Has not failed to notify the Director of any action taken by any Director of any other state similar to that under Paragraph 021.02.d. ()

03. Appointed Actuary. A qualified actuary who is appointed or retained to prepare the Statement of Actuarial Opinion prescribed by this rule; either directly by or by the authority of the board of directors through an executive officer of the company. The company will timely notify the Director in writing of the name, title (and, in the case of a consulting actuary, the name of the firm) and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary. The notice will state that the person meets the requirements of Subsection 021.02. The company will timely notify the Director if the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements of Subsection 021.02. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice will so state and give the reasons for replacement. ()

04. Standards for Asset Adequacy Analysis. The asset adequacy analysis prescribed by this rule: ()

a. Will conform to the standards of practice promulgated by the Actuarial Standards Board and to any additional standards under this rule, which standards are to form the basis of the statement of actuarial opinion per Section 021; and ()

b. Will be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board. ()

05. Liabilities to Be Covered. ()

a. Under authority of Section 41-612(12), Idaho Code, the statement of actuarial opinion will apply to all in force business on the statement date regardless of when or where issued, e.g., Aggregate Reserve for Life Contracts, Aggregate Reserve for Accident and Health Contracts, reserves for Deposit Type Contracts, and Claims for Life and Health Contracts as reported in Exhibits of the annual statement, and equivalent items in the separate account statement or statements of the annual statement. ()

b. If the appointed actuary determines from asset adequacy analysis that the company should hold a reserve in addition to the company's aggregate reserve and calculated as described in Section 41-612(12), Idaho Code, the company will establish such additional reserve. ()

c. Additional reserves established under this Subsection and deemed unnecessary in later years may be released. Released amounts need to be disclosed in the actuarial opinion for the applicable year. The Director will not deem the release of such reserves to reflect a lower standard of valuation. ()

022. STATEMENT OF ACTUARIAL OPINION BASED ON AN ASSET ADEQUACY ANALYSIS.

01. General Description. The statement of actuarial opinion submitted under this section will consist of; ()

a. A paragraph identifying the appointed actuary and qualifications; ()

b. A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items that have been analyzed for asset adequacy and the analysis method, and identifying the reserves and related actuarial items covered by the opinion that have not been so analyzed; ()

c. A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, (e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios. Supported by a statement of each such expert in the form prescribed by Subsection 022.05; and ()

d. An opinion paragraph expressing the appointed actuary's opinion on the adequacy of the supporting assets to mature the liabilities. ()

e. One (1) or more additional paragraphs will be needed in these cases; ()

i. If the appointed actuary considers it necessary to state a qualification of his opinion; ()

ii. If the appointed actuary needs to disclose an inconsistency between the analysis method or basis of asset allocation used on the prior opinion date and those used for this opinion; ()

iii. If the appointed actuary needs to disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release; or ()

iv. If the appointed actuary chooses to add a paragraph briefly describing the assumptions forming the basis for the actuarial opinion. ()

02. Recommended Language. The Department has adopted recommended language, available on the Department's website, which in typical circumstances should be in the statement of actuarial opinion. The language may be modified to meet the circumstances of a particular case, but the appointed actuary should use language that clearly expresses their professional judgment. The opinion will, in any event, retain all pertinent aspects of the language provided. ()

03. Assumptions for New Issues. Changing an actuarial assumption for new issues, claims, or other liabilities that used for prior new issues, claims, or other liabilities is not a change in actuarial assumptions within the meaning of this Section. ()

04. Adverse Opinions. If the appointed actuary cannot form an opinion, then they will refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then they will issue an adverse or qualified actuarial opinion expressing the reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph. ()

05. Reliance on Data Furnished by Other Persons. If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, then the actuarial opinion should identify the persons the actuary relies upon and precisely identify the items subject to reliance. The persons on whom the appointed actuary relies will also certify precisely what items the person provided information on and the extent to which those items are accurate, complete, or reasonable. The certification will include the person's signature, title, company, address and telephone number and the date on which it is signed. ()

023. ALTERNATE OPTION.

01. Standard Valuation Law. The Standard Valuation Law broadly authorizes the Director to accept a foreign insurer's valuation that meets the requirements for an Idaho-domiciled company. As an alternative to meeting the minimum aggregate amounts for Idaho, the Director may make one (1) or more of these approaches available to the opining actuary: ()

a. A statement that the reserves "meet the requirements of the insurance laws and regulations of the State of [state of domicile] and the formal written standards and conditions of this state for filing an opinion based on the law of the state of domicile." If the Director chooses to allow this alternative, a formal written list of standards and conditions will be made available. If a company chooses to use this alternative, the standards and conditions in effect on July 1 of a calendar year will apply to statements for that calendar year, and they will remain in effect until they are revised or revoked. If no list is available, this alternative is not available. ()

b. A statement that the reserves "meet the requirements of the insurance laws and regulations of the State of [state of domicile] and I have verified that the company's request to file an opinion based on the law of the state of domicile has been approved and that any conditions prescribed by the Director for approval of that request have been met." If the Director chooses to allow this alternative, a formal written statement of such allowance will be issued no later than March 31 of the year it is first effective. It will remain valid until rescinded or modified by the Director. The rescission or modifications will be issued no later than March 31 of the year they are first effective. After that statement has issued, if a company chooses to use this alternative, the company will file a request to do so, along with justification for its use, no later than April 30 of the year of the opinion to be filed. The request is deemed approved on October 1 of that year if the Director has not denied it. ()

c. A statement that the reserves "meet the requirements of the insurance laws and regulations of the State of [state of domicile] and I have submitted the prescribed comparison as specified by this state." ()

i. If the Director chooses to allow this alternative, a formal written list of products (to be added to the table in Item (ii) below) for which the prescribed comparison will be provided will be published. If a company chooses to use this alternative, the list in effect on July 1 of a calendar year will apply to statements for that calendar

year, and it will remain in effect until revised or revoked. If no list is available, this alternative is not available. ()

ii. If a company desires to use this alternative, the appointed actuary will provide a comparison of the gross nationwide reserves held to the gross nationwide reserves that would be held under NAIC codification standards. Gross nationwide reserves are the total reserves calculated for the total company in force business directly sold and assumed, indifferent to the state in which the risk resides, without reduction for reinsurance ceded. The information provided will be at least:

(1) Product Type	(2) Death Benefit or Account Value	(3) Reserves Held	(4) Codification Reserves	(5) Codification Standard

()

iii. The information listed will include all products identified by either the state of filing or any other states subscribing to this alternative. ()

iv. If there is no codification standard for the type of product or risk in force, or if the codification standard does not directly address the type of product or risk in force, the appointed actuary will detail the specific method and assumptions used to determine the reserves held. ()

v. The comparison provided by the company is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum. ()

d. Notwithstanding the above, the Director may reject an opinion based on the laws and regulations of the state of domicile and require an opinion based on Idaho law. If a company does not provide the opinion within sixty (60) days of the request or such other time period set by the Director after consulting with the company, the Director may hire an independent actuary at the company’s expense to prepare and file the opinion. ()

024. DESCRIPTION OF ACTUARIAL MEMORANDUM INCLUDING AN ASSET ADEQUACY ANALYSIS AND REGULATORY ASSET ADEQUACY ISSUES SUMMARY.

01. General. ()

a. Per Section 41-612(12), Idaho Code, the appointed actuary will prepare a memorandum to the company describing the analysis done to support their opinion on the reserves. The memorandum will be made available for the Director’s examination upon request, but it will be returned to the company after the examination and cannot be considered a record of the insurance Department or subject to automatic filing with the Director. ()

b. In preparing the memorandum, the appointed actuary may rely on, and include as a part of their own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of Subsection 021.02, with respect to the areas covered in such memoranda, and so state in their memorandum. ()

c. If the Director requests a memorandum that does not exist, or if the Director finds the memorandum’s analysis violates the standards of the Actuarial Standards Board or the standards and requirements of this rule, the Director may designate a qualified actuary to review the opinion and prepare supporting memorandum. The company will pay, subject to the Director’s direction and control, the reasonable and necessary expense of the independent review. ()

d. The reviewing actuary will have the same status as an examiner for purposes of obtaining data from

the company, and the Director will retain the reviewing actuary's work papers and documentation. But any information provided by the company to the reviewing actuary and included in the work papers will be considered as examination workpapers and will be kept confidential to the same extent as prescribed by Section 41-227, Idaho Code. The reviewing actuary cannot be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer under this rule for the current year or any of the preceding three (3) years. ()

e. Per Section 41-612(12), Idaho Code, the appointed actuary will prepare a regulatory asset adequacy issues summary, the contents of which are specified in Subsection 024.03. This summary will be submitted by March 15 of the year after the year for which a statement of actuarial opinion based on asset adequacy is mandatory. The summary is confidential and exempt from public disclosure under Sections 41-612(12) and 74-107(5), Idaho Code. ()

f. Per Section 41-612(12)(d)(iv), the Director will accept a foreign or alien company's regulatory asset adequacy issues summary, on file with the insurance supervisory official of another state, if the Director determines the summary reasonably meets the requirements for a company domiciled in Idaho. Thus, foreign or alien insurers that had to file the regulatory asset adequacy issues summary in their home state are exempt from filing in Idaho, except upon Director request, if the other state has substantially similar reporting requirements and the summary is timely filed with the other state's commissioner. ()

02. Details of the Memorandum Section Documenting Asset Adequacy Analysis (Section 022).
When an actuarial opinion under Section 022 is provided, the memorandum will show the analysis has been done per the asset-adequacy standards in Subsection 021.04 and any additional standards under this rule. It will specify; ()

a. For reserves; ()

i. Product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant; ()

ii. Source of liability in force; ()

iii. Reserve method and basis; ()

iv. Investment reserves; ()

v. Reinsurance arrangements; and ()

vi. Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis. ()

b. Documentation of assumptions to test reserves, such that an actuary reviewing the actuarial memorandum could form a conclusion as to their reasonableness, for: ()

i. Lapse rates (both base and excess); ()

ii. Interest crediting rate strategy; ()

iii. Mortality; ()

iv. Policyholder dividend strategy; ()

v. Competitor or market interest rate; ()

vi. Annuitization rates; ()

- vii. Commissions and expenses; and ()
- viii. Morbidity. ()
- c. For assets: ()
 - i. Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets; ()
 - ii. Investment and disinvestment assumptions; ()
 - iii. Asset data source; ()
 - iv. Asset valuation bases. ()
- d. Documentation of assumptions, such that an actuary reviewing the actuarial memorandum could form a conclusion as to their reasonableness, for: ()
 - i. Default costs; ()
 - ii. Bond call function; ()
 - iii. Mortgage prepayment function; ()
 - iv. Determining market value for assets sold due to disinvestment strategy; and ()
 - v. Determining yield on assets acquired through the investment strategy. ()
- e. For the analysis basis: ()
 - i. Methodology; ()
 - ii. Rationale for inclusion/exclusion of different blocks of business and how pertinent risks were analyzed; ()
 - iii. Rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of “materiality” that was used in determining how rigorously to analyze different blocks of business); ()
 - iv. Criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under “moderately adverse conditions” or other conditions as specified in relevant actuarial standards of practice); ()
 - v. Whether the impact of federal income taxes was considered and the method of treating reinsurance in the asset adequacy analysis. ()
- f. Summary of material changes in methods, procedures, or assumptions from prior year’s asset adequacy analysis; ()
- g. Summary of Results; ()
- h. Conclusion(s). ()
- i. The regulatory asset adequacy issues summary will include: ()
 - i. Descriptions of the tested scenarios (including whether they are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative-ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which,

if held, would eliminate the negative aggregate surplus values. Ending surplus values will be determined by extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial, or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force; ()

ii. The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that materially differ from assumptions in the previous asset adequacy analysis; ()

iii. The amount of reserves and the identity of the product lines that were subjected to asset adequacy analysis in the prior opinion but that were not analyzed for the current opinion; ()

iv. Comments on any interim results that significantly concern the appointed actuary. For example, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods; ()

v. The actuary's methods for recognizing how reinsurance impacts the company's cash flows, including both assets and liabilities, under each tested scenario; and ()

vi. Whether the actuary is satisfied that the asset adequacy analysis appropriately considered all options explicit or embedded in any asset or liability (including those affecting cash flows embedded in fixed income securities) and equity-like features in any investments. ()

j. The regulatory asset adequacy issues summary will name the company for which the regulatory asset adequacy issues summary is being supplied and be signed and dated by the appointed actuary rendering the actuarial opinion. ()

04. Conformity to Standards of Practice. The memorandum will state:
"Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum." ()

05. Use of Assets Supporting the Interest Maintenance Reserve and the Asset Valuation Reserve. An appropriate allocation of assets in the amount of the Interest Maintenance Reserve (IMR), whether positive or negative, needs to be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets cannot be applied for other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The Table of Reserves and Liabilities of the opinion and in the memorandum will disclose the amount of the assets used for the AVR. The memorandum will also disclose the method for selecting particular assets or allocated portions of assets. ()

06. Documentation. The appointed actuary will retain, for at least seven (7) years, sufficient documentation from which to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained. ()

025. -- 999. (RESERVED)

IDAPA 59 – PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
59.01.01 – RULES FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)
DOCKET NO. 59-0101-2201
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 2023 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 Sections, 59-1301, 59-1314, 59-1372, 59-1383 and 59-1392, 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.

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 7, 2022, Idaho Administrative Bulletin, [Vol. 22-9, pages 516-520](#).

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:

The change in this rule will not have any fiscal impact on the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact: Cheryl George, (208) 287-9231.

DATED this 21st day of November 2022.

Don Drum
Executive Director
Public Employees Retirement System of Idaho
P.O. Box 83720,
Boise, ID 83720-0078
Phone: (208) 287-9230
Fax: (208) 334-3804

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 Sections, 59-1301, 59-1314, 59-1372, 59-1383 and 59-1392.

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 21, 2022.

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

Section 59-1302(15) defines employer and directs compliance with the Internal Revenue Regulations. The regulations that PERSI followed were not finalized and are no longer valid, thus requiring the removal of paragraphs a., b. and c from IDAPA 59.01.01.004.13. The addition of school employees as a separate rate class under section 59-1322, Idaho Code, and the addition of the definition of school employee under section 59-1302(31A) requires a change to the definition of general member in IDAPA 59.01.01.004.17. The definitions of Normal Retirement Age, Permissive Service Credits, Police Officer and Teacher at 59.01.01.004.19, 22, 23 and 30 respectively do not need to be defined in IDAPA.

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

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: The change in this rule will not have any fiscal impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because negotiated rulemaking is not feasible because it would be inconsistent with the PERSI Board's exclusive fiduciary responsibility for plan operation.

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(s), 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 6th day of July, 2022.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0101-2201

004. DEFINITIONS.

The definitions in Section 59-1302, Idaho Code, and the following apply to this chapter: (3-31-22)

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: (3-31-22)

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 (3-31-22)

b. Employees who are on leave of absence on the last day of the fiscal year and either: (3-31-22)

i. Return to active service for at least thirty (30) days before December 31 immediately following the end of the fiscal year; or (3-31-22)

ii. Are entitled to benefits under the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA). (3-31-22)

02. Actuary. This is the actuary retained by the Board. (3-31-22)

03. Administrator. The Board. (3-31-22)

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. (3-31-22)

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. (3-31-22)

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. (3-31-22)

07. Choice Plan or Account. This includes two (2) elements: (3-31-22)

a. The defined contribution component of the PERSI plan consisting of gain sharing allocations together with earnings thereon or the individual accounts therein; and (3-31-22)

b. The plan designated to receive voluntary and employer contributions as provided in Section 59-1308, Idaho Code, or the individual accounts therein. (3-31-22)

08. Code. The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the IRS Code are to such sections as they may from time to time be amended or renumbered. (3-31-22)

09. Compensation. “Compensation” as used in Section 59-1342(6), Idaho Code, means “salary” as defined by Section 59-1302(31), Idaho Code. (3-31-22)

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. (3-31-22)

11. Date of Retirement. “Date of retirement” means the effective date on which a retirement allowance becomes payable. (3-31-22)

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 IRS Code and section 1.401(a)(9)-4, Q&A-4, of the Treasury regulations. (3-31-22)

13. Employer. ~~For purposes of compliance with federal tax law, an Employer, as defined in Section 59-1302(15), Idaho Code must also meet each of the requirements of Paragraphs a. through e. 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. (3-31-22)

~~**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. (3-31-22)~~

~~**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. (3-31-22)~~

~~**c. Governmental control.** A state or local governmental unit exercises control over the entity. For this purpose, control is defined in Subparagraph 005.08.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 005.08.c.ii. of this rule. (3-31-22)~~

~~**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. (3-31-22)~~

~~**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. (3-31-22)~~

~~**iii. Definition of "private faction."** A private faction is any electorate if the outcome of the exercise of control described in Subparagraph 005.08.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 005.08.c.iii. of this rule, related parties (as defined in 26 CFR Section 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. (3-31-22)~~

14. 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. (3-31-22)

15. Firefighters' Retirement Fund. “Firefighters’ Retirement Fund” or “FRF” is the retirement fund provided by Chapter 14, Title 72, Idaho Code. (3-31-22)

16. 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. (3-31-22)

17. General Member. “General member” is a PERSI member not classified as a police officer, firefighter, ~~or~~ paid firefighter, or school employee. (3-31-22)()

18. Likely. For the purpose of Section 59-1302(12)(b), Idaho Code, “likely” means with reasonable medical certainty. (3-31-22)

~~**19. 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. (3-31-22)~~

~~**20. 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. (3-31-22)~~

~~**220. 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: (3-31-22)~~

~~**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. (3-31-22)~~

~~**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. (3-31-22)~~

~~**c.** Normal Retirement Age. The member’s age at the time that the member is eligible to retire with an unreduced benefit. (3-31-22)~~

~~**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. (3-31-22)~~

~~**22.** 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. (3-31-22)~~

~~**23.** Police Officer. “Police officer” means an employee who is serving in a position as defined in Section 59-1303, Idaho Code. (3-31-22)~~

~~**2421. 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. (3-31-22)

~~25~~**22. 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. (3-31-22)

~~26~~**23. Required Beginning Date.** The date specified in Section 508.02 of these rules. (3-31-22)

~~27~~**24. 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. (3-31-22)

~~28~~**25. Service.** For the purposes of Sections 536 and 539, “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. (3-31-22)

~~29~~**26. Surviving Spouse.** “Surviving spouse” is a person as defined in Section 15-2-802, Idaho Code. (3-31-22)

~~30.~~ ~~Teacher.~~ “~~Teacher~~” is defined as a school employee who is required to be certified. (~~3-31-22~~)

~~31~~**27. 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. (3-31-22)

(BREAK IN CONTINUITY OF SECTIONS)

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. (3-31-22)

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. (3-31-22)

02. State Agencies. ~~The agencies of the state of Idaho shall be considered a single employer; a~~ **An** employee working for more than one (1) state agency establishes eligibility based on the total hours of employment worked with all state agencies. (~~3-31-22~~)()